GOLDEN ANNIVERSARY FOR JAYCEES

HON. RICHARDSON PREYER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 22, 1970

Mr. PREYER of North Carolina. Mr. Speaker, this year marks the 50th anniversary of the Junior Chamber of Commerce. Those 50 years have seen the Jaycees emerge as a major influence for good in our country. All across this country young men joined together in this organization are working every day for programs that enrich the lives of the people in their communities. Perhaps the greatest contribution the Jaycees have made during this half century is that of bringing young men of differing faiths, parties, and races together in a series of good works. This has been true in my district where there are more than a dozen clubs. I am particularly proud of the Jaycees in Greensboro, N.C., my hometown, who have twice been chosen best in the United States and once best in the world. This is an honor shared by no other Jaycee chapter in the United States and is a remarkable achievement for a chapter in a city of approximately 150,000 people.

When the Jaycees see a problem, they do not wait for Government or someone else to do something about it; they go into action. They make a tremendous contribution to the strengthening of the crucial voluntary, private sector of our culture. I am sure I speak for all the citizens in my district in expressing our appreciation to the Jaycees on this 50th anniversary of their organization for all they have done for us.

SENATE—*Saturday, January 24, 1970*

The Senate met at 10 o'clock a.m. and was called to order by the President pro tempore (Mr. RUSSELL).

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Direct us, O Lord, in all our doings with Thy most gracious favor, and further us with Thy continual help; that, in all our works begun, continued, and ended in Thee, we may glorify Thy holy name, and finally by Thy mercy obtain everlasting life.

Give us strength, O God, to hold our own convictions, not denying them for fear of men; but help us also to understand those who differ from us, and to be fair to those whom we find it hard to understand. In every act we pray that we may seek to know and do Thy will, through Jesus Christ our Lord. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, January 23, 1970, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORGANIZED CRIME CONTROL ACT OF 1969—TRIBUTE TO SENATOR HRUSKA

Mr. MANSFIELD. Mr. President, at the conclusion of the debate and disposition of S. 30, I had some words to say about certain Members who participated in that debate, notably the Senator from Arkansas (Mr. MCCLELLAN), the Senator in charge of the bill.

Through inadvertence, I forgot to mention the outstanding efforts of the distinguished Senator from Nebraska (Mr. HRUSKA), the ranking member of the Judiciary Committee and good right hand of the Senator from Arkansas in the consideration of the bill which had been considered for the previous 3 days and which passed the Senate yesterday.

At this time I wish to extend to the Senator from Nebraska my thanks for his diligence, for his integrity, for his knowledge, and for the continual efforts he made not only during the 3-day debate but also over the past year in helping to bring out S. 30.

I would feel remiss if the RECORD did not show, in addition to those mentioned by me yesterday, my personal appreciation to the distinguished Senator from Nebraska for the contributions he made to the consideration of this most important bill.

AGRICULTURAL LEGISLATION

Mr. ELLENDER. Mr. President, I wish to announce that the Committee on Agriculture and Forestry has been considering quite a few bills on its calendar and has ordered them reported to the Senate. Two of them are important; namely, the Aiken egg bill and amendments to the School Lunch Program and Child Nutrition Act.

The committee held hearings last year on those sundry bills but failed to report them because we could not muster a quorum.

I am glad to say that those bills will soon be on the calendar for consideration.

NOTICE OF HEARINGS ON A NEW FARM BILL

Mr. ELLENDER. Mr. President, I wish to announce that the Committee on Agriculture and Forestry has given me authority to announce to the Senate and the country that on February 18 the committee will begin hearings on a farm bill to replace the one which expires December 31 of this year.

I think it is very important that we consider a new bill or an extension of the present law with possibly some refinements.

I understand that the House of Representatives is having some difficulty in voting a bill out of its committee on agriculture. It has been working on a program for about a year now.

The Senate committee hopes that before it gets through with its own deliberation and presentation of a bill to the Senate, that the House will have acted.

As chairman of the committee, I wish to invite all Senators, in fact, all Members of Congress, to make their presentations if they desire to do so, as to what should be included in a new or extended farm bill; also all farm organizations are invited to present their views—in fact anyone interested in agriculture. I can foresee much difficulty ahead for the consumers if a bill is not enacted this year.

I am not going to state now what my views are on the subject, but I ask permission to present to the Senate my views on what should be done this year in agriculture either on Monday or Tuesday of next weeek.

I am hopeful that Senators interested in agriculture will give us all the help they can. We will need much guidance.

It seems that on the House side, there are too many Representatives coming from the cities who cannot understand why it is necessary for us to continue to subsidize farmers in paying them not to plant portions of their farms, when there are so many hungry people in the world.

The present farm program costs about $3¼ billion a year. That figure may be a little high. But it is my considered judgment that it will be much cheaper to the consumers, for Congress to provide funds to pay such subsidies in order to produce an abundance of food, rather than to have farmers to continue to go out of business and maybe thereby create a scarcity of food and fiber.

I have no doubt that if such a condition were—created, the American public would pay much more for their food and fiber than if we were to continue programs such as we have on our staute books at the present.

ORDER FOR ADJOURNMENT TO MONDAY, AND FROM MONDAY TO TUESDAY AT 10:30 A.M.

Mr. ELLENDER. Mr. President, I would like to ask the majority leader to give me some time perhaps on Tuesday morning, so that I may have an hour or an hour and a half in which to present the farm program.

Mr. MANSFIELD. Would the Senator

consider the possibility of coming in a little earlier on Tuesday?

Mr. ELLENDER. Yes, indeed. I will be ready at any time the majority leader suggests.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon Monday next.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(Subsequently this order was modified to provide for the Senate to adjourn to 11 o'clock a.m. on Monday.)

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business on Monday, it stand in adjournment until 10:30 Tuesday morning.

Mr. SCOTT. Mr. President, reserving the right to object—and I will not object—I want to bring out the fact that normally on Tuesday there is a meeting at the White House. There will not be such a meeting this Tuesday. I state that for clarification. The following Tuesday there will be.

Mr. MANSFIELD. Mr. President, has the time for Tuesday been agreed upon?

The PRESIDENT pro tempore. It has not yet been agreed to. Is there objection to the Senate convening at 10:30 on Tuesday morning? The Chair hears none, and it is so ordered.

ORDER FOR RECOGNITION OF SENATOR ELLENDER ON TUESDAY MORNING

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of the prayer on Tuesday next, the distinguished Senator from Louisiana, the chairman of the Committee on Agriculture and Forestry, be recognized for 1½ hours.

The ACTING PRESIDENT pro tempore (Mr. METCALF). Without objection, it is so ordered.

JAMES E. PALMER, JR.

Mr. SPARKMAN. Mr. President, I would like to take this opportunity to pay tribute to a Senate staff man who passed away on Thursday, January 22. I refer to Mr. James E. Palmer, Jr., who was a professional staff member of the Subcommittee on Housing and Urban Development, of which I am chairman.

Many Senators knew and will remember Jim from the duties he performed more recently on the Housing Subcommittee and before that as a staff member of the Joint Committee on Defense Production. Jim came to the Hill to the joint committee in January 1956, and moved to the Housing Subcommittee in April 1959, where he was working when he died.

Jim had a long career as a faithful Government employee. He commenced his Government duties in the Criminal Division of the Department of Justice and interrupted his service with that Department to serve in the Coast Guard from 1942 until 1945 during World War II. He returned to the Department and served in several important posts in the Department until he terminated his service there to enter private law practice in 1954.

In addition to distinguishing himself as a civil servant, Jim also distinguished himself as a lawyer. He was the national president of the Federal Bar Association from 1949 to 1950. He served as a member of the house of delegates to the American Bar Association for three terms. He was chairman of the American Bar Association Special Committee on Federal Rules and Civil Procedure. He was editor of the Federal Bar News, and held the chairmanships of many other important committees with the American and Federal Bar Associations.

Many will remember that he was a founding member and president during 1959–60 of the Capitol Hill chapter of the Federal Bar Association.

Jim Palmer was born on July 17, 1913, at Laurel, Miss. He received his A.B. degree from Roanoke College in Roanoke, Va., his masters degree from Duke University in North Carolina and his LL. B. from the University of Virginia. Some will remember him as an office assistant to the late Carter Glass, and others will remember him as the author of the book, "Carter Glass, Unreconstructed Rebel."

Jim Palmer was a good man, he was a religious man, and he was a compassionate man. He was always ready to be of assistance to anyone who came to him with a problem as is reflected by the fact that he was the president of Big Brothers of the District of Columbia and a member of the national board of that organization since 1951.

Jim Palmer will be missed around the Senate. He will be missed at home. Our sympathy is with his wife, Sue, and his four fine children, James E. III, Lela, Charles J., and Suzanne.

COMMENDATION OF SENATOR ELLENDER

Mr. MANSFIELD. Mr. President, I want to take this means to commend and congratulate the distinguished Senator from Louisiana (Mr. ELLENDER), because in the first week of the second session of the 91st Congress, he has already reported six bills from his committee.

I am glad to note that all the committees of the Senate are getting down to brass tacks and holding hearings and are trying to report the legislation, some of which has been initiated in the Congress, others of which have been recommended by the President and the administration.

It is a good augury and a good sign. And if we can keep up this pace, the prospects of getting out at a reasonably early date will be enhanced as a result.

The Senator from Louisiana talks of the need for a farm program. I understand that the Farm Act expires this year and that the distinguished Senator from Louisiana will give the Senate the benefit of his views shortly. But I do not understand that the administration has sent down its farm program as yet. I would hope that it will be forthcoming.

The farmers are living in a squeeze and the cost of living is increasing. The price of wheat in Montana and other States is extremely low.

Many small farmers are being forced off their farms and being forced into the cities, making a bad situation that much more difficult. I would hope that something could be done to take care of their needs and to decrease the flow of people into the congested areas.

It is my understanding that the farm population numbers not in excess of 8 percent, and due to the mechanization and the need to make a livelihood, it is still declining.

I applaud the Senator from Louisiana for his initiative. And I hope that before very long the administration would forward its legislative recommendations of what would be a good farm program.

Mr. ELLENDER. Mr. President, I understand that the committee has been in contact with the Department of Agriculture. The committee has been working with the Committee on Agriculture and Forestry in the House.

It is our plan to have outstanding witnesses heard beginning on February 18. And we will invite the Secretary to send some of his advisers there to listen to the testimony and then the Secretary of Agriculture will be afforded an opportunity of giving his views of what the new bill should contain.

I want to say frankly that so far there have not been any new changes offered by the Department of Agriculture. And I am very hopeful, as the majority leader has just stated, that the Department of Agriculture will come to us with a concrete suggestion as to what ought to be done to improve the plight of the farmers.

Mr. MANSFIELD. Mr. President, may I say that in referring to the need for recommendations from the Department of Agriculture I was not doing so in a critical sense, because I realize the difficulties involved in the farm problem and the need for continuous study. But what has been said about getting the cooperation and the recommendations of the Department of Agriculture applies to all departments within the Government, within the executive branch. We would like to cooperate and accommodate the administration. We would like to keep going on all fours as long as we can. We would like to see these messages coming up shortly, followed soon thereafter by specific legislative recommendations.

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. RANDOLPH. Mr. President, since the discussion by the distinguished majority leader (Mr. MANSFIELD) and the colloquy with the able Senator from Louisiana (Mr. ELLENDER) concerns the responsibility of the administration and also the equal responsibility of the legislative branch of Government in reference to messages and measures that would be acted on following the recommendations of the administration, I would say again what I have said on prior occasions in this Chamber. I recognize the responsibility of an administration, be it Democratic or Republican, to propose legislation to Congress. I believe, however, that Congress must bear a cer-

tain degree of criticism from the American people for not proposing and passing legislation which originates on Capitol Hill.

It is the duty of Congress not only to pass legislation, I say to my distinguished majority leader, but also to propose legislation, and through the process of subcommittee and committee hearings, to develop legislation.

So I think when we consider the matter of administrative recommendations for legislation we should not forget that it is historically right that Congress itself move forward, especially when the initiative in many vital areas is not taken by the administration.

It is well to have comity between the executive and the legislative branches. It is helpful to have understanding. It is encouraging to have cooperation. We can and must work together for the national good.

Mr. MANSFIELD. I made my remarks to indicate a spirit of cooperation on the part of the Senate with the administration, and to hope that on that basis an accommodation can be reached which would make it possible to speed up the legislative process.

BILL INTRODUCED

A bill was introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. WILLIAMS of New Jersey:

S. 3333. A bill to amend title XVIII of the Social Security Act to authorize payment under the program of health insurance for the aged for services furnished an individual by a household aide (in such individual's home) as part of a home health service plan); to the Committee on Finance.

(The remarks of Mr. WILLIAMS of New Jersey when he introduced the bill (S. 3333) appear later in the RECORD under the appropriate heading.)

S. 3333—INTRODUCTION OF A BILL AUTHORIZING PAYMENT UNDER MEDICARE FOR SERVICES PERFORMED BY A HOUSEHOLD AIDE

Mr. WILLIAMS of New Jersey. Mr. President, I introduce for appropriate reference, a bill to amend title XVIII of the Social Security Act to authorize payment under the program of health insurance for the aged for services furnished an individual by a household aide as part of a home health service plan.

Under medicare home health aides may provide health care services for an individual released from a hospital or extended care facility pursuant to a plan established and reviewed periodically by a physician. Some of these services incude part-time nursing care; physical, occupational, or speech therapy; and medical social services under the direction of a physician.

Part A of medicare pays for these covered services up to 1 year after the patient's discharge from a hospital or extended care facility for as many as 100 home health visits if the following conditions are met:

First. The patient was in a participating hospital for at least three days in a row;

Second. The individual is confined to his home after his release;

Third. A doctor determines that the individual needs home health care and establishes a home health plan within 14 days after his discharge from the hospital or extended care facility; and

Fourth. The home health care is for further treatment of a condition for which the patient received services as a bed patient in the hospital or extended care facility.

Medicare also permits home health aides to provide certain supportive household services which are essential to the patient's personal health care—such as bathing or helping the patient to the bathroom—at home. Frequently an elderly person is under medical supervision at home but is unable to perform certain household duties, although he may not need personal care. For example, a cardiac patient may be able to take care of his own feeding and bathing, but may not be able to perform some of his household chores which would be too strenuous for his heart. Many older persons are institutionalized at great expenses because of this gap in medicare.

The bill that I am introducing would help to meet this crucial problem by authorizing payment under medicare for service provided by household aides as part of a home health service plan. It is important to emphasize that these services would be furnished to an individual in his own home by a certified home health agency as part of a comprehensive medical plan for the patient.

Institutional care continues to be a costly expenditure under medicare. This expenditure could be reduced significantly if appropriate alternatives were available for the care of older persons. For instance, many elderly nursing home residents are unnecessarily institutionalized because there is no alternative method of care for them. Many could be returned to their homes if supportive services were covered under medicare. Moreover, many hospital patients could be released much earlier if these services were available. Coverage of these services under medicare would be beneficial for both the patient and the Nation. For the individual, living at home, rather than being institutionalized, may be of important therapeutic value in improving his emotional well-being. Society would also benefit in being able to meet the needs of the elderly more efficiently and economically.

In testimony before the Subcommittee on Health of the Elderly in the Senate Special Committee on Aging, Dr. James G. Haughton, first deputy administrator of New York City's Health Services Administration, stated:

Institutional care for the aging has been and continues to be under both titles XVIII and XIX, a major element of expenditure. Much of this expenditure is inappropriate and related to our serious lack of appropriate social alternatives for the care of the aging. It is estimated that at least 10 percent of the nursing home residents in New York City are unnecessarily institutionalized for this reason.

Another good example of the crucial need for this legislation was eloquently expressed by Mrs. Susan Kinoy, project director, home health and housing program, Citizens' Committee on Aging, Community Council of Greater New York. In a letter addressed to me, she said:

In the past 2½ years our program has revealed that many of the elderly have benefitted under Title XVIII from medical and professional services in their own homes. These services do not meet all of their needs.

Some older persons in order to remain in their own homes only need help with home maintenance chores such as housecleaning, laundry and cooking. In other words, there are times when a patient may not need personal care such as bathing and toileting. The law now requires that a Home Health Aide may not provide home maintenance care to an older person unless it is in addition to personal care. To illustrate our concern, a cardiac patient or someone with severe arthritis might be able to take care of his own feeding, bathing and toileting, but not be able to perform the household maintenance tasks.

At this time we feel that provision should be made for home maintenance service as a reimbursable visit. It is important to emphasize that a home maintenance worker would be provided by a certified home health agency in the context of the total medical plan for the patient.

For these reasons, I urge prompt and favorable consideration of this proposal.

Mr. President, I ask that the bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 3333), to amend title XVIII of the Social Security Act to authorize payment under the program of health insurance for the aged for services furnished an individual by a household aide—in such individual's home—as part of a home health service plan, introduced by Mr. WILLIAMS of New Jersey, was received, read twice by its title, referred to the Committee on Finance, and was ordered to be printed in the RECORD, as follows:

S. 3333

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1861(m)(4) of the Social Security Act is amended by inserting after "services of a home health aide" the following: "or a household aide o[illegible]th".

SEC. 2. The amendment made by the first section of this Act shall apply with respect to services furnished on or after the first day of the second month which begins after the date of the enactment of this Act.

ADDITIONAL COSPONSORS OF A BILL

S. 3100

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Michigan (Mr. HART) and the Senator from Missouri (Mr. EAGLE-

TON) be added as cosponsors of S. 3100, to amend the Social Security Act to provide increases in benefits under the old-age, survivors, and disability insurance program, to provide health insurance benefits for the disabled, and for other purposes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969—AMENDMENTS

AMENDMENTS NOS. 451 THROUGH 454

Mr. HUGHES submitted four amendments, intended to be proposed by him, to the bill (S. 3246) to protect the public health and safety by amending the narcotics, depressant, stimulant, and hallucinogenic drug laws, and for other purposes, which were ordered to lie on the table and to be printed.

AMENDMENT NO. 455

Mr. McINTYRE submitted an amendment intended to be proposed by him to S. 3246, supra, which was ordered to lie on the table, be printed, and printed in the RECORD.

(The remarks of Mr. McINTYRE when he submitted the amendment appear later in the RECORD under the appropriate heading.)

THE APOLLO PROGRAM

Mr. ANDERSON. Mr. President, on May 25, 1961, President John F. Kennedy, in a special message to Congress, presented the now historic challenge to the American people of placing a man on the moon and returning him safely to earth within the decade of the 1960's. We achieved that goal. As the Apollo program has received substantial funds over the years, I believe it is important to review the cost of that great accomplishment.

The early estimates, made in 1961, when we had only a general outline of the requirements, placed the total cost between $20 and $40 billion.[1]

On June 13, 1962, the Space Committee received the first refinement of that estimate when Dr. Robert Seamans, then the Associate Administrator of NASA, stated:

> If you want to use a total figure for manned space flight up to successful lunar landing and return, our estimates today run at about $15 billion. We are saying $20 billion because we know there will be unanticipated costs.[2]

In June of 1963, Mr. James E. Webb, then the Administrator of NASA, stated that out of the total space effort, $20 billion was allocated to a lunar landing and return.[3]

The following year in March 1964, NASA provided a detailed breakdown of the estimated Apollo costs, totaling $19.501 billion.[4]

The committee received testimony in February of 1966 that the total cost was then estimated to be $22.718 billion;[5] and in April of 1969, $23.877 billion.[6]

Against this background, on September 26, 1969, I requested Dr. Paine, the Administrator of NASA, to provide an accounting for the funds which had been allocated to accomplishing the manned lunar landing objective. In so doing, I suggested to Dr. Paine that appropriate recognition should be made for tangible assets remaining in the national inventory which were not required because of the technical success achieved with the first landing attempt and that also he should identify those other assets which would be available for future national space endeavors. Dr. Paine, on November 21, 1969, furnished the committee with a comprehensive statement summarizing the cost accrued in the several major elements of the Apollo program through July 31, 1969, a date which includes successful completion of the Apollo 11 mission. The cost accrued as of that date was $21.349 billion. However, and I believe this is a very significant point, this amount includes $2 billion in flight hardware either completed or in its final stages which is available for future space flights. In my judgment, this amount can be taken as a credit against the cost of achieving the lunar landing objective. This results in a total cost of the first landing of about $19.4 billion. In addition, there are identified in Dr. Paine's summary, capital assets of continuing national value such as the manned space flight facilities and the worldwide tracking and communications networks which are valued at $2.8 billion. These capital assets have the potential of producing a continued return on investment over the years.

In this brief discussion of lunar landing costs and in attempting to identify an authoritative estimate for this venture, I would hope that we would not lose sight of the many intangible benefits to the Nation whose value cannot be calculated. I certainly would be remiss if I did not mention the tremendous prestige which has accrued to the United States, the great accumulation of theoretical and practical scientific knowledge, and many technological and managerial advances.

Mr. President, I believe NASA deserves a great deal of credit for accomplishing man's greatest technological achievement within a cost estimate and a time schedule established almost a decade earlier.

Mr. President, I believe that history will record this investment as one of the wisest decisions ever made by this or any other nation.

In closing, Mr. President, I ask unanimous consent that Dr. Paine's letter presenting a summary of Apollo costs, dated November 21, 1969, to which I have previously referred, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL AERONAUTICS
AND SPACE ADMINISTRATION,
Washington, D.C., November 21, 1969.

Hon. CLINTON P. ANDERSON,
Chairman, Committee on Aeronautical and Space Sciences, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your letter of September 26, 1969, the following information is provided concerning the resources invested in the development and demonstration of a national manned lunar landing capability.

At the time of its establishment, the national goal of a manned lunar landing and return in this decade represented the most difficult technological endeavor ever to challenge the American nation. During this period, senior NASA officials in testimony before the Congress estimated the cost of such an undertaking at between $20 and $40 billion. After intensive study, planning, definition and design effort, this estimate was refined, and in March 1964, NASA provided to your Committee an estimate of approximately $19.5 billion. This estimate was based on the assumption that there would be a timely initiation of a follow-on program which would bear a portion of the relatively fixed cost required to develop and sustain this national capability. The estimates then, and the subsequent annual re-assessments, have consistently included the cost of 10 Saturn, 12 Saturn IB and 15 Saturn V launch vehicles with associated spacecraft; the complete construction and equipping of the Kennedy Space Center, Manned Spacecraft Center, and Mississippi Test Facility and major new facilities at White Sands Missile Range and the Marshall Space Flight Center; instrumentation and operation of tracking and data acquisition networks; launch operations and mission support; and all operations costs of the three manned space flight centers. In so doing, we have attempted to reflect the total program cost associated with the development of this manned lunar landing capability, including the cost of the initial lunar landing.

In testimony before the various Congressional committees over the years, I believe we have made it clear that the pursuit of a manned lunar landing goal would require the creation of basic national capabilities and resources which were necessary to obtain preeminence in space—which then was a matter of national policy. The lunar objective, therefore, was not simply an end in itself but, rather, provided the focus for the effort to attain space supremacy for whatever the national interest required. In pursuit of this objective, the establishment of flight hardware quantities was predicated on a logical and sound mission sequencing which we believed gave this nation reasonable assurance that the national goal could be met. No one could have reasonably predicted the unparalleled success of the Apollo flight program which included 10 successful Saturn I unmanned flights, five successful Saturn IB flights including one manned, and six Saturn V flights culminating with a successful manned lunar landing and return to earth in July 1969. Through our early successes in the Apollo program, we now have an inventory of large space vehicle systems; the necessary facilities for checkout, launch, and mission operations; and trained people in government, industry, and universities which provide an opportunity for this nation to continue with significant achievements in earth orbital and lunar space missions.

Since 1964, there has been only one signifi-

[1] "NASA Authorization for Fiscal Year 1965," hearings, Senate Committee on Aeronautical and Space Sciences, 88th Cong., 2d Sess., March 4, 1964, p. 290.

[2] "NASA Authorization for Fiscal Year 1963," hearings, Senate Committee on Aeronautical and Space Sciences, 87th Cong., 2d Sess., June 13, 1962, p. 108.

[3] "NASA Authorization for Fiscal Year 1964," hearings, Senate Committee on Aeronautical and Space Sciences, 88th Cong., 1st Sess., June 12, 1963, p. 790.

[4] "NASA Authorization for Fiscal Year 1965," hearings, Senate Committee on Aeronautical and Space Sciences, 88th Cong., 2d Sess., March 4, 1964, p. 300.

[5] "NASA Authorization for Fiscal Year 1967," hearings, Senate Committee on Aeronautical and Space Sciences, 89th Cong., 2d Sess., February 28, 1966, p. 9.

[6] "NASA Authorization for Fiscal Year 1970," hearings, Senate Committee on Aeronautical and Space Sciences, 91st Cong., 1st Sess., April 29, 1969, p. 108.

cant change in the assumptions used in estimating the cost to develop the manned lunar landing capability. As I mentioned previously, the initial estimate was based on the assumption that there would be a timely initiation of a program utilizing Apollo-Saturn systems after the development of a manned lunar landing capability. In March 1966, we provided to your Committee a revised estimate based on an assumption that there would not be a timely initiation of a follow-on program. The estimate on this basis was $22.718 billion and since that time this assumption has been used in updating our estimates. While we regarded this as an undesirable and possibly unrealistic assumption, we continued to base our estimates on it so that decisions as to the future use of Apollo resources and questions as to the effect of decisions to alter the program could be related to a clear bench mark.

In April 1969, we furnished your Committee an estimate of $23.877 billion for the manned lunar landing capability based on the same program elements and assumptions just described. This estimate would still be valid for that program if it were carried out, but with the success of Apollo 11, we have the opportunity to utilize this demonstrated capability in a more meaningful way. By improving payloads and modifying spacecraft to increase lunar surface staytime, we can enhance significantly the return of scientific data from both lunar orbit and the lunar surface.

In summary, we did meet the national commitment to put men on the moon and return them safely to earth in this decade. We did the job at a cost nearer the lower end of the range of estimates given over eight years ago in spite of unpredictable substantial inflationary conditions that have occurred in both the national economy and the aerospace industry over the past several years. The actual cost accrued through the first manned lunar landing and return was $21.35 billion (July 31, 1969). Approximately $2 billion of this amount represents the value of flight hardware completed or in process and available for future flights. In addition, it includes capital assets of approximately $2.8 billion which are of continuing national value, such as the manned space flight centers; unique production, test and launch support equipment; the worldwide tracking communications and data acquisition network; instrumentation ships; etc. The following table details the first definitive estimate made in 1964, the March 1966 estimate, the April 1969 estimate, and the actual cost incurred through July 31, 1969:

[Millions of dollars]

	March 1964 estimate [1]	March 1966 estimate [2]	April 1969 estimate [2]	Actual cost through July 31, 1969
Apollo spacecraft	$5,053	$6,642	$7,945	$6,939
Saturn launch vehicles	7,702	8,941	8,770	7,940
Engine development	1,190	1,053	854	854
Operations support	863	1,077	1,393	1,137
Total MSF R. & D.	14,808	17,713	18,962	16,870
Tracking and data acquisition	776	730	664	541
Facilities	1,664	1,773	1,830	1,810
MSF center operations	2,253	2,502	2,421	2,128
Total	19,501	2,718	23,877	21,349

[1] Based on assumption of timely initiation of follow-on program.
[2] Based on assumption that there would not be timely initiation of a follow-on program; also reflects the effects of program stretchout.

Future historians will record the final judgment on how significant Apollo and July 20, 1969 were in the long history of this planet and the short age of man upon it. But I think we can today truly state that Apollo was a triumph in management as well as in technology and engineering which united government, industry and universities in a common peaceful undertaking. At least one-half million people worked on the manned lunar landing program at one time or another during the eight years from its announcement to its initial success. They were required to achieve standards of excellence never before envisioned on so great a scale. I feel that one of the most valuable—and often overlooked—contributions to the nation is this great reservoir of manpower trained to, and capable of, new standards of performance and quality. At the present time, 125,000 of these people are still engaged in manned space flight programs. The others are now contributing significantly to other segments of our economy.

The attachment to this letter provides a specific statement of the estimated investments in each major program area. I hope this information presents the manned lunar landing capability costs in a manner responsive to your request.

Sincerely yours,

T. O. PAINE,
Administrator.

MANNED LUNAR LANDING COSTS DETAIL BY PROGRAM AREA

Significant technical accomplishments associated with the achievement of the manned lunar landing include:

Development of a sophisticated spacecraft, the Command and Service Module, capable of performing a variety of missions in earth orbit and the lunar and cislunar environment.

Development of the Lunar Module capable of carrying two men and a payload of experiments from lunar orbit to the lunar surface and of returning the men to a lunar orbit rendezvous with the Command and Service Module.

Development of this country's two most powerful launch vehicles—the Saturn IB and Saturn V—providing a capability to place very large payloads in earth orbit as well as to insert nearly fifty tons into a translunar trajectory.

Creation of the operational capabilities and facilities to effectively employ this hardware including the worldwide Manned Space Flight Network for tracking and communicating with the spacecraft, the Mission Control Center, and Launch Complex 39.

Establishment of major development, production and test organizations and facilities with a wide range of capabilities for future space endeavors.

Costs incurred through July 31, 1969 including all development, production, test and operations effort leading to the manned lunar landing and leaving available for future use some $2.0 billion of major space hardware in process and capital assets estimated at $2.8 billion are as follows (in millions of dollars):

Apollo spacecraft	$6,939
Saturn launch vehicles	7,940
Saturn I	767
Saturn IB	1,127
Saturn V	$6,046
Engine development	854
Operations support	1,137
Mission control systems	229
Launch operations	219
Flight and crew operations	477
Technical support	212
Total, manned space flight R. & D.	16,870
Tracking and data acquisition	541
Facilities	1,810
Manned space flight facilities	1,631
Tracking and data facilities	179
Manned Space Flight Center operations	2,128
Total	21,349

Specific application of these funds is described below:

APOLLO SPACECRAFT

Costs through July 31, 1969, $6,939 million.

Of the 18 Block II Command and Service Modules assigned for manned flight included in the Manned Lunar Landing program, only five have been flown. At the time of the Apollo 11 mission, two additional CSM's were completed and 11 were in an advanced production stage or in checkout. These last 13 are now available for future lunar exploration and for Apollo Applications missions. Similarly, because of the early success achieved by Apollo 11, we have nine Lunar Modules completed or in production which will be available for more extensive lunar exploration.

More than forty boilerplate and test spacecraft were produced for ground and unmanned flight test programs. These programs ranged from structural, dynamic, acoustic, thermal, electromagnetic, drop and flotation tests to launch escape test flights at White Sands, New Mexico and major flight missions on Saturn IB and Saturn V vehicles.

Included in these spacecraft costs were the development and production of the spacesuits, portable life support systems, and the lunar science experiments, including the first four Apollo Lunar Surface Experiment Packages. Associated with this production and also funded by this project were the development and production of the sophisticated guidance and navigation systems, portions of which are applicable to commercial aircraft; support of the development of spacecraft systems; spacecraft integration effort; operation of the White Sands Test Facility; and the development and operation of the 14 spacecraft automatic checkout equipment stations which will be available to support future missions.

SATURN LAUNCH VEHICLES

Costs through July 31, 1969:

	Million
Saturn I	$767
Saturn IB	1,127
Saturn V	6,046
Total, Saturn launch vehicles	7,940

To meet the lunar landing commitment, Marshall Space Flight Center undertook the development and production of ten Saturn I vehicles, 12 Saturn IB vehicles, and 15 Saturn V vehicles, and their associated engines. To achieve a high confidence in successful flight of these vehicles, a number of ground test stages and partial stages were built and subjected to dynamic, structural, propulsive, all-systems and other test procedures.

The Saturn I vehicle, after successfully demonstrating the concept of multi-clustered engines and the use of a liquid hydrogen/liquid oxygen fueled stage and engine, launched three pegasus satellites in an extensive study of micrometeoroid density in space. The Apollo program used four Saturn IB vehicles in unmanned flight tests and one

for Apollo 7, the first manned flight. Seven of the Saturn IB vehicles remain and have been assigned to Apollo Applications to provide crew and logistics support for the Saturn V Workshop missions. Six Saturn V vehicles have flown, two in unmanned flight test and four others in Apollo 8 through 11. One of the nine remaining Saturn V vehicles is planned for use as the launch vehicle for the Apollo Applications Workshop, which will commence long-duration manned flight by the United States and initiate the concept of a space station. Using this Workshop, studies and experiments will be undertaken in such areas as astronomy, space physics, life sciences, and earth resources. The other eight Saturn V vehicles will be used in a continuing series of lunar exploration flights to expand on the initial knowledge obtained from Apollo 11.

Additionally, the funding supported allied efforts and tasks in the development and production of these vehicles such as the development of stage and vehicle mechanical and electrical ground support equipment, which represents an available investment in support of continued production; the operation of the stage and engine test facilities at various locations such as Mississippi Test Facility, Santa Susana, Edwards AFB, and Sacramento; systems integration; engineering, test, and reliability and quality assurance services; and the transportation of the stages from the manufacturing plants to the test site and then to Cape Kennedy.

ENGINE DEVELOPMENT

Costs through July 31, 1969, $854 million.

Fiscal Year 1968 was the last year that funding was requested for the Engine Development project, as all the engines were qualified by that time. Production of the H–1, J–2, and F–1 engines for the vehicles was funded by the Saturn Launch Vehicles project. The development and test of four major engines was accomplished: the liquid hydrogen/liquid oxygen RL–10 and J–2; and the RP–1/liquid oxygen H–1 and F–1. The RL–10, currently being used on the Centaur stage, and the J–2 used on Saturn upper stages are the world's only known large thrust engines using the highly efficient liquid hydrogen fuel. The F–1 is the most powerful engine ever flown.

OPERATIONS SUPPORT

Costs through July 31, 1969:

	Million
Mission Control Systems	$229
Launch Operations	219
Flight and Crew Operations	477
Technical Support	212
Total, Operations Support	1,137

Pre-flight activities, launch operations and conduct of missions have required development and expansion of personnel skills and equipment capabilities including complex data processing systems for mission planning and control. Funding in this area provided for checkout of spacecraft and launch vehicles at the John F. Kennedy Space Center, maintenance and operation of launch facilities, mission control, astronaut training, mission simulations, mission planning, remote site operations and recovery equipment activities. The Mission Control Center, flight simulators, and other training and operational equipment represent an investment that can and will be applied to future manned programs.

Additionally, the funding in this area supported systems efforts such as trajectory analysis, which will provide reference standards for future lunar missions; development of functional and performance standards for Apollo hardware; technical documentation, and technical integration and evaluation. Much of the data and knowledge provided through these systems technical studies can be applied to future space flight programs.

TRACKING AND DATA ACQUISITION

Costs through July 31, 1969, $541 million.

These funds provided for the operation of the tracking stations, ships, and aircraft comprising the Manned Space Flight Network. In addition, development and installation of ground support and electronic equipment; installation and lease of worldwide communication lines and services; and data processing and engineering for the Manned Space Flight Network was accomplished. Of particular significance was the development and installation of the unified S-Band communications and tracking system, which is applicable to future space requirements.

The facilities and trained manpower of this network represent an asset capable not only of tracking and communicating with future manned missions, but also, in conjunction wtih other stations, of supporting unmanned missions, including earth and lunar orbital satellites, planetary spacecraft and missions conducted by the Department of Defense.

FACILITIES

Costs through July 31, 1969:

	Million
Manned Space Flight Facilities	$1,631
Tracking and Data Facilities	179
Total, Facilities	1,810

Construction funding was used to create unique major new facilities including the entire John F. Kennedy Space Center, the Manned Spacecraft Center, Houston, Texas, and the Mississippi Test Facility. Most spectacular are the massive facilities of Launch Complex 39 which includes Launch Pads A and B, the huge Vertical Assembly Building (VAB), the Launch Umbilical Towers on which the Saturn V and spacecraft are erected inside the VAB, the crawler vehicle capable of moving the entire assembly to the launch pad, the Mobile Service Structure which is also moved to the launch pads by the crawler, and the intricate Launch Control Center. Unique facilities at the Manned Spacecraft Center include the Mission Control Center; space environment simulation chambers large enough to accommodate entire spacecraft; crew training facilities such as the Command Module and Lunar Module simulators and the translation and docking simulators; and the Lunar Receiving Laboratory. Major modifications and additions to existing facilities have been accomplished at the Eastern Test Range, including Launch Complexes 34 and 37; at the Michoud Assembly Facility in Louisiana where about two million square feet of building space was devoted to launch vehicle production; at Huntsville, Alabama where a major capability has been established for development and testing of large launch vehicles; at White Sands, New Mexico for test of spacecraft propulsion and launch escape systems; at the Slidell, Louisiana computer facility; at Edwards Air Force Base; at Sacramento California; and at government and contractor facilities located at Downey, Seal Beach, Huntington Beach, Canoga Park and Santa Susana, California. Nearly all of these facilities continue to be actively used and represent a national capability that could be adapted and applied to space programs of the next several decades.

In addition to the Manned Space Flight development, production, test, launch and control of space vehicles, construction funding has provided a highly effective network of 13 ground stations for tracking and control of manned space flights.

MSF CENTER OPERATIONS

Costs through July 31, 1969, $2,128 million.

Funding provided for the operation of three Manned Space Flight Centers whose personnel, equipment and facilities are the cornerstone of our capability to conduct manned space flight programs. The highly skilled people and technical facilities at these centers, assembled to achieve the manned lunar landing goal, represent a major national asset with vast capabilities to accomplish future objectives. Types of costs covered include civil service personnel compensation and employee benefits; general purpose data processing systems; facilities services including maintenance and repair of facilities; building materials and supplies; custodial and security services; scientific and technical information programs; technical libraries; printing, graphics, and reproduction; administrative supplies and equipment, utilities, shipping services, and medical services.

RELATED PROGRAMS

In connection with the March 1964 review of the estimated cost of the manned lunar landing, cost estimates were provided for other programs each of which has accomplished significant objectives in its own right, but also contributed information and experience directly relevant to the manned lunar landing effort. All flight series in these programs have been completed. The following table compares the cost estimates provided in March 1964 with the reported program costs at completion:

[Dollars in millions]

	March 1964 estimated	Reported Program costs
Mercury	$171	$154
Gemini	1,213	1,283
Supporting technology	349	244
Ranger	262	239
Surveyor Lander	628	593
Lunar Orbiter	227	192

UKRAINIAN INDEPENDENCE

Mr. SCOTT. Mr. President, January 22 marked the 52d anniversary of the short-lived independence of the Ukrainian Republic—declared in Kiev in 1918 and destroyed by Red troops in 1920. Today, thousands of Americans of Ukrainian descent, celebrate the memory of freedom, and renew the faith that it will eventually be regained. But unfortunately, people within the Ukraine are denied the privilege of that celebration. They can only hope silently that the yoke of bondage will someday be removed.

It is up to us, as free Americans, to continue our struggle and to declare with renewed vigor our belief that the people of the Ukraine and of all the captive nations will one day regain control of their own destinies and live in freedom.

For freedom is the key to any nation's development. To have gained it and then lost it is tragic. We observe the anniversary of Ukrainian independence, mourn its loss, and reaffirm our dream that it will someday be restored.

THE ATMOSPHERE HAS CHANGED

Mr. PROXMIRE. Mr. President, more than 20 years have passed since President Truman first presented the human rights convention outlawing genocide to the Senate. The President asked the Senate for its advice and consent. But though the Genocide Convention came to us in 1949, it still has not been ratified; and neither have the Conventions on Forced Labor and Political Rights for Women received our approval.

I find it difficult to understand why we have failed to act on these conventions. Writing in the Human Rights

Journal of the International Institute of Human Rights, Bruno Bitker, a distinguished Wisconsin lawyer and expert on human rights matters, traced the progress—or lack of it—of these conventions through the Senate.

Discussing the atmosphere that pervaded the Congress and the country in the fifties, Mr. Bitker suggests this may have been a factor delaying ratification. But even granting the validity of this assessment of the mood of the country in that period, now conditions have changed; now is the opportune moment for us to ratify these three human rights conventions.

I ask unanimous consent that a portion of Mr. Bitker's article be printed in the RECORD.

There being no objection, the excerpt from the article was ordered to be printed in the RECORD, as follows:

II. LÉGISLATION, JURISPRUDENCE ET PRATIQUE (LEGISLATION, DECISIONS AND PRACTICE)

(Some remarks on U.S. policy of the ratification of the international human rights conventions by Bruno Ritker)

When the Genocide Convention was under consideration within the United Nations, the United States representatives were among the leaders in its preparation. Mrs. Eleanor Roosevelt was the U.S. Representative to the Human Rights Commission. At that same time, 1948, the Universal Declaration of Human Rights was also under consideration by the General Assembly.

Americans, perhaps in an understandable spirit of chauvinism, have long insisted that they were the principal drafters of both documents, particularly the Universal Declaration. In fact, of course, many of the world's leading statesmen participated in the work. The Honorable René Cassin was one of the most effective among them. But it is true that many of the ideas, even words and phrases, were out of American tradition and national documents. Indeed, at the Teheran Human Rights Conference in 1968, the memory of Mrs. Roosevelt, as a leading spirit in producing the Declaration, dominated the opening sessions of the Conference.

With that in mind it is difficult to understand why the United States has dragged its feet in ratifying human rights treaties. It is not only difficult for other nations to understand it, but is equally so for many Americans, particularly those of the generation to whom the stench of the Nazi gas chambers was something sensed in their own lifetime. It is no less a matter of wonderment to those of a younger generation of Americans even though they know of the horrible crime of the Nazi years only through reading history.

When in 1949, the President of the United States sent the Genocide Convention to the U.S. Senate for its advice and consent, as required by our Constitution, it was assumed that its approval by the required two-thirds of that body was more or less routine. As President Truman pointed out in his letter of transmittal to the Senate, "by the leading part of the United States has taken in the United Nations in producing an effective international legal instrument outlawing the world shocking crime of Genocide, we have established before the world our firm and clear policy toward that crime."

But to the surprise of our own government, opposition from respected sources to the treaty began to make itself heard. It was inconceivable that, in the post-war atmosphere, serious opposition could exist. But exist it did, and its spokesman was the American Bar Association, the leading organization of American lawyers. Although the ABA was usually regarded as conservative, on questions of international law it had usually taken a forward looking position, contrary to the isolationist philosophy that was again rearing its head as part of the then developing cold war. The ABA had in fact, strongly advocated expansion of the jurisdiction of the International Court. This evidenced its international outlook.

In September, 1949, however, the Bar Association through its policy making body, the House of Delegates, adopted a resolution by a divided vote opposing ratification of the Genocide Convention on the ground that it "involves important constitutional questions" and "(raises important fundamental questions but does not resolve them in a manner consistent with our form of government".

In the ensuing debate which took place before the Foreign Relations Committee of the U.S. Senate, it became clear that the opposition was moved more by fears of threats to the sovereignty of states within the United States than by any basic constitutional objections. It was asserted, in effect, for example, that if a citizen of a southern state were accused of the crime of lynching that he would be "seized" by some foreign secret police agency, flown to an unknown destination and tried before a "communist controlled court)".

It was clear, of course, from a reading of the Convention that the usual crime of murder, such as lynching, was not intended to be and in fact was not covered by the treaty. It was clear, too, that under the treaty the persons charged with Genocide were to be tried by a court of the nation in which the act was committed. A trial by an international penal tribunal, if one were ever created, was possible only as to those parties which had accepted its jurisdiction. As of 1949 no such tribunal had been established, and during the ensuing 20 years none has ever seriously suggested let alone established. Even if one were brought into existence it would require treaty recognition by the United States through its constitutional treaty making process before it became binding on the United States. This means that the President would have to approve it and submit it to the U.S. Senate for its advice and consent by a two thirds vote, before it could be ratified. Certainly no President or Senate would treat this problem lightly.

The hearings before the Senate sub-committee in 1950 were lengthy. Many prominent members of the bar appeared both for and against ratification. Finally the sub-committee filed a report supporting ratification but, in order to satisfy the real or imagined fears of objectors, recommended certain clarifications which, among other things, would resolve all doubts of the convention's applicability to a single lynching. Despite that, however, the full Senate committee delayed favorable action. By this time the early winds of McCarthyism began to be felt, the cold War had attained a sub-zero level, and anything which seemed to favor cooperation with foreigners became suspect. Finally the Senate committee in 1950, tabled the matter. In other words it took no positive action. The treaty has been in the deep freeze ever since. It was ironic that McCarthyism should have had such an effect because subsequently Senator McCarthy announced his support of ratification.

It is not easy now to understand the atmosphere then existing in the United States which produced the fear that too much traffic with foreigners, particularly through the United Nations, might undermine our sovereignty. But the fact is that this produced substantial support for the proposed Bricker Amendment which amendment to the U.S. Constitution was intended to hamstring the authority of the President in his dealings with other nations. Among the dangers it was claimed would be eliminated by the Bricker Amendment were the human rights treaties that were being supported by our representatives to the United Nations. Many of the lawyers who had opposed Genocide were leaders in support of Bricker.

By 1953, during the presidency of Dwight Eisenhower, support for the Bricker Amendment was strong enough and the likelihood of its adoption disturbingly possible, so as to move the administration to take whatever steps appeared proper and desirable to halt the threat. Human rights treaties were constantly cited as the witches whose evil effects would undermine the American Republic; they could only be stopped by the Bricker Amendment. John Foster Dulles, then Secretary of State, in April 1953, on behalf of the Administration informed a Senate Committee that it did not then intended become a party to any human rights covenent or press for ratification. By this gesture of appeasement the Administration hoped to take the ammunition away from the Bricker forces. But the act was in vain. The Bricker supporters would not withdraw. Although it now appears that the sacrifice was not necessary, the fact is that the Bricker Amendment lost by only one vote.

From 1953 to 1963, although various citizens groups were urging ratification of other human rights treaties, none were sent by the President to the Senate for its advice and consent and no serious effort was made to force action on Genocide. Finally, recognizing how important to our national interest was our participation in these treaties, President Kennedy did, in 1963, send three new conventions to the Senate. They were considered so innocuous as to almost insure favorable action. They were the Conventions on the Political Rights of Women, Forced Labor, and Slavery. But the Senate took no action on them.

OREGON COMMUNITY COLLEGES NEED ALLOCATIONS CONTAINED IN HEW APPROPRIATIONS BILL

Mr. HATFIELD. Mr. President, my State of Oregon is one in which you will find that private citizens have taxed themselves until their pocketbooks are frayed to provide for the education of their children. Oregon has surpassed all the States on the Pacific coast in the per capita expenditures per student it spends each year—over $800 each.

The State has made a valiant effort to provide community colleges for all its students and adults who wish to attend, and the property taxpayers have made noble efforts to provide this, particularly in the area of vocational education.

I ask unanimous consent, to have printed in the RECORD—and I hope that Members of Congress will take note of the efforts made—two letters written by Mr. Donald K. Shelton, executive secretary of the Oregon Community College Association, which vividly illustrative of the contributions of property taxpayers in relation to the contributions of the Federal Government. The figures are also indicative of the need to substantially increase Federal appropriations, and are, therefore, a justification for a vote to override the President's veto of the H.R. 13111, the appropriations bill for the Department of Health, Education, and Welfare.

I also ask unanimous consent to have printed in the RECORD a telegram from Dr. Dale Parnell, Oregon's superintendent of public instruction, with statistical evidence which is complementary to that of Mr. Shelton's.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

OREGON COMMUNITY COLLEGE ASSOCIATION,
Salem, Oreg., December 30, 1969.

Hon. MARK O. HATFIELD,
U.S. Senator, Senate Office Building,
Washington, D.C.

DEAR SENATOR HATFIELD: In December of each year the Oregon Community College Association compiles and advises its member institutions concerning resources from state and federal levels for the year beginning the July first following. This timing is necessary because community colleges prepare local budgets during the month of January. They, in turn, must space their timing on the various formal steps which must be undertaken during the spring to secure local approval in order to implement financial planning. Any well conceived program that efficiently utilizes resources requires that amount of lead time as a minimum.

The following text of this letter is the advice rendered to them in this Association publication concerning Federal Vocational Education Funds. It stated:

"FEDERAL VOCATIONAL FUNDS

"It is impossible to make any prediction as of December 1969 concerning 1970–71 resources from this source. Congress will not consider appropriations for 1969–70 until after they reconvene January 19, 1970. Informed opinion predicts that total 1969–70 funds available will not exceed 1968–69 levels. Since part of this year's moneys is in categorical set-asides and there are significantly more students enrolled in community college vocational programs, a lesser amount per student is a foregone certainty. Shortly, the Department of Education will be making partial payments for fall quarter 1969 based on continuing resolution authority. Payments will be at an approximate rate of $95 per FTE for the first 200 vocational student FTE and $55 thereafter. This compares with $185 per FTE for the first 200 and $110 thereafter in 1968–69. Later, some additional resources will be made available when the 10 percent for ability to pay formula and handicapped students are identified.

"Review of historical data for this program indicates a need for extreme caution to avoid over-estimating these funds for 1970–71. In general, the moneys available for distribution have remained quite constant for the last several years while numbers of students being served has escalated rapidly. Initially, up to $330/FTE was available along with $500,000 per year for construction and $100,000 for equipment. The rate was then cut to $185–$110/FTE and construction money was required for operation. This year there will be no equipment funds (occasionally money is released late for which equipment is the only usuable alternative in terms of time deadlines) and further reduction in the operations rate per student. Next year, the only certainty is an increase enrollment of students in vocational-technical curricula. Based on the past, the safest prediction is a rate 20–25 percent per FTE student under that which is finally determined for the 1969–70 year.

"This program demonstrates the ridiculous nature of practice in timing of federal appropriations for education. Local agencies financial planning has to be at least 12 months in advance of federal practice. The Oregon Congressional Delegation is well aware of this situation and have long sought to provide remediation. Oregon community colleges can assist them by providing them appropriate information and exhibits demonstrating this inadequacy."

Please feel free to utilize this information in any way desired to acquaint Legislative colleagues and the Executive Department concerning this need for revision in the timing of federal appropriations which must subsequently be incorporated in local agency planning. The expediency of incorporating such flexibility in federal financial planning is acknowledged. However, it must be recognized that waste and inefficient use of resource is of greater long-term importance in equating federal resource input with goal oriented output.

Your continued cooperation in seeking remediation will be sincerely appreciated.

Sincerely yours,
DONALD K. SHELTON,
Executive Secretary.

OREGON COMMUNITY COLLEGE ASSOCIATION,
Salem, Oreg., January 14, 1970.

Senator MARK O. HATFIELD,
Senate Office Building
Washington, D.C.

DEAR SENATOR HATFIELD: Your vote to override the promised Presidential veto of the Education Appropriation is requested. In my December 30, 1969, letter to you an exhibit was included which discussed the declining level of federal participation in community college Vocation-Technical Education programs. Included in this letter are additional data which documents large annual increases in number of students in vocational-technical programs in Oregon community colleges, annual increases in cost of operating these programs and declining federal participation therein.

Federal machinery has been cranked up to condition our society to changing technology and the need for increased occupational pretraining for youth and re-training for adults. In the last decade Oregon has created an entirely new educational system, community colleges, that have been given this charge and have accepted the responsibility to meet the need. In 1963–64, 13,393 students enrolled in vocational programs in Oregon community colleges. In that year $838,111 in federal funds were available for the purposes of the program. By the 1968–69 academic year, enrollment of vocational-technical programs in Oregon community colleges had jumped to 33,832 students, an increase of 253 percent in the five year period. Average program costs for a full-time equivalent student was $694 in 1963–64 and $1,012 in 1968–69, a 46% increase. By 1968–69 federal funds grew 27 percent to $1,067,986. In contrast with the federal effort, state resources increased 766% and local resources were up 799% during the period.

The above statistics are so extreme that I suspect they appear to you as the "gee whiz" type you often receive. Unfortunately, they are not. The have been taken from the official record of the State Regulator Body for community colleges. Perhaps the key to assessing their accuracy is review of increases in State funds for this program which are roughly consistent with increased numbers being served and the increased cost of doing it.

In raising the necessary public funds to operate these programs, the local area with the poorest tax collecting vehicle, the local property tax, has made 799 percent increased effort and the federal government with the best vehicle, the income tax, has made a 27 percent effort. We have reached a level of saturation. Local budget defeats are rapidly increasing in number. Meeting the need is increasingly becoming beyond the local area's ability to cope.

Analysis of the data indicates that the federal government is better in establishing priorities and urging others to do things than they are in applying those priorities to their own activity. The President's need to cool off the inflationary pressure in the economy is acknowledged. The basic problem is that federal practice is to continue activity of past importance because each activity has its organization and pressure group working for its continuation. It seems to me that a Congressional override of the Education Appropriation veto is not necessarily inconsistent with controlling the total level of expenditure. The Executive Department through its budget bureau could be given a congressional mandate to do what's admittedly unpopular, but in the federally expressed best interest of the country.

Sincerely yours,
DONALD K. SHELTON,
Executive Secretary.

OREGON BOARD OF EDUCATION
Salem Oreg., January 24, 1970.

Senator MARK HATFIELD,
Senate Office Building,
Washington, D.C.:

The following statistical information should prove valuable if it is necessary for Congress to override a presidential veto of educational appropriations.

In the five year period 1963–64 to 1968–69 Oregon Community College full time equivalent students increased 430 percent from 3,635 to 19,299.

The State contribution toward community college operating cost increased from $286 per FTE to $412 per FTE, or 44 percent. The local contribution increase from $372 per FTE to $521 per FTE or forty percent the Federal contribution decreased from $78 per FTE to $55 per FTE a reduction of 29 percent.

Total operating cost for community colleges increased from $2,675,545 in 1963–64 to $19,088,262 in 1968–69. A 613 percent jump the Federal contribution increased 277 percent from $283,111 to $1,067,986 but the State contribution increased 665 percent from $1,040,282 to $7,966,130 and the local contribution increased 643 percent from $1,352,-152 to $10,054,146.

For cost of completed community college construction since 1962 the Federal share of the total of $15,058,190 was $3,216,419; the State share was $6,514,999, and the local share was $5,326,772. The Federal share has dropped steadily each year from 34 percent of construction costs in 1964 to 21 percent in 1967–68.

This means that in raising the necessary public funds to operate community colleges the local area with the poorest taxing vehicle the local property tax made a greatly increased effort and assumed a disproportionate share of the burden. But the Federal Government with the best taxing vehicle, the income tax cut its share. It seems the Federal Government PS more adept at establishing priorities than it is at applying priorities to its own commitments. When the Federal Government urges all out efforts to fight unemployment and underemployment it should put its money where its objectives are our concern for untrained persons who are flowing into the pool of unemployment must be as great as our concern for those already in the pool. That means preventive action through education must get top priority rather than remedial efforts. The vast taxing power of the Federal Government can be used for best advantage where a penny of prevention is worth a pound of cure.

DALE PARNELL,
Superintendent of Public Instructions.

CONCLUSION OF MORNING BUSINESS

Mr. MANSFIELD. Mr. President, is there further morning business?

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate pro-

ceed to the consideration of the unfinished business.

The ACTING PRESIDENT pro tempore. The bill will be stated by title for the information of the Senate.

The BILL CLERK. A bill (S. 3246) to protect the public health and safety by amending the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MANSFIELD. Mr. President, I would like to ask the Senator from Connecticut if the measure now before the Senate is known as the Controlled Dangerous Substances Act of 1969?

Mr. DODD. The Senator is correct.

Mr. MANSFIELD. I thank the Senator.

Mr. DODD. The measure is the Controlled Dangerous Substances Act of 1969.

Mr. MANSFIELD. Mr. President, will the Senator yield briefly without losing his right to the floor?

Mr. DODD. I yield.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. DODD. Mr. President, I ask unanimous consent that William C. Mooney, Jr., a member of the staff of the Juvenile Delinquency Subcommittee be granted the privilege of the floor during the consideration of S. 3246, the Controlled Dangerous Substances Act of 1969.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DODD. Mr. President, as we move to consider the proposed legislation I hope I can impress all Senators with the urgency of passing this bill as soon as we can do so.

Every day of delay means that more young people are convicted under the antiquated system of penalties that make up our present narcotic and dangerous drug laws.

Every day some of the cream of American youth have their futures and careers ruined because of an arrest for marihuana, the drug that carries with it a penalty equal to that of deadly heroin.

Every day of delay means hundreds of thousands of "pep pills," "goof balls," and "happy pills" are too easily diverted from legitimate channels to the criminal drug traffic, and into our college campuses, into our high school cafeterias, and into our grade school playgrounds.

In short, Mr. President, more delay means more drugs are being made available to more people, which means more misery, addiction, and crime visited upon this country.

Last night, the Hartford Times of Hartford, Conn., carried a story on the increase in drug deaths in Hartford County. I would read only a part of the article concerning the ages of the persons who died. The article said:

> Aside from the number of drug deaths, the age of the victims is a distressing fact. Of the 53 deaths, only 18 were over 30 years of age; 21 were under 25 years of age, and of that 21, 16 were under 21 years of age.
>
> The average age of all 53 victims was 30 years.

I believe that this article emphasizes the terrible problem we have on our hands. It prevails everywhere throughout the country. These 53 deaths occurred in just one county in Connecticut in 1969. That is one of the reasons why I urge that we move as quickly as we can to enact the proposed legislation.

I should now like to make some comments about the size of the problem so that Senators who have a chance to read the RECORD over the weekend will be aware of it when we return on Monday.

Arrests for violations of narcotic and drug law violations in 1968 were more than four times as great as they were in 1960. To put it another way, narcotic and marihuana arrests have increased 323 percent since the beginning of the decade of the 1960's.

I might add that these staggering increases were primarily the results of marihuana arrests.

The majority of drug abusers are young people.

One-fourth of all those arrested on drug charges were under 18 years old, and three-fourths of them were under 25.

In fact, marihuana and other drugs are now even reaching younger age groups, including junior high school and elementary levels, in epidemic proportions.

Mr. President, in America today, young people under 21 are arrested by the police at the rate of one every 5 minutes for one drug law violation or another.

Most of these young people who get involved with drugs, particularly those involved with marihuana, are not hardened young criminals.

Many of them come from homes that do not suffer from what has been called cultural or economic deprivation.

Mr. MANSFIELD. Mr. President, will the Senator from Connecticut yield?

Mr. DODD. I am delighted to yield to the majority leader.

Mr. MANSFIELD. I wonder if the distinguished Senator from Connecticut would, for my edification, because I am very much interested in this subject——

Mr. DODD. Yes, I know that the Senator is greatly interested in it.

Mr. MANSFIELD. Would the Senator state whether marihuana is a stimulant or a narcotic, and just what are its properties.

Mr. DODD. Other than to say it is generally classed as a hallucinogenic drug like LSD, it is difficult to say exactly what marihuana is. I wish I could give the majority leader a better answer. But aside from this general classification I do not know anyone who is positive about the exact nature of the various kinds of foreign and domestic marihuana. This is one of the reasons why I wrote into the bill a provision for an in-depth study by top experts to determine the answer to the question raised by the majority leader. This study will also answer many of the other questions perplexing Americans today. Is marihuana harmful, very harmful, or slightly harmful? Is it truly addictive? Does it cause crime and insanity as some have charged? There is a great conflict of opinion about this.

In my own judgment, I believe it is a threshold drug that frequently leads the user to the use of more dangerous drugs. This is demonstrable from the records and statements of former addicts. However, this is an area in which it is difficult, at this point in time, to answer specifically all of the questions that have been raised. I assure the majority leader that my proposed study will come up with an answer to his question when the legislation has been passed.

Mr. MANSFIELD. Does the Senator from Connecticut have any idea how marihuana smoking compares, in its effects, with cigarette smoking? Labels are now placed on packages of cigarettes, reading:

> Caution: Cigarette Smoking May Be Hazardous To Your Health.

Does the Senator have any idea, based on hearings before his committee, of what a comparison would shape up to?

Mr. DODD. Yes, I do. My answer to the majority leader is that because it can cause emotional breakdowns and psychosis, I think marihuana is much more dangerous than cigarettes and therefore it is, in my judgment, more harmful. We know from the experts that it can be much more harmful to the human nervous system in a short period of time than the use of alcohol for the same period of time. It is even suspected that marihuana can cause brain damage to some users.

As the Senator from Montana knows, there are different types of marihuana, some more damaging than others. That is why it is difficult, categorically, as I am sure the Senator understands, to give a precise answer. But, in my judgment, the use of marihuana is not to be compared with the use of tobacco. I happen to think, now that I have stopped smoking, that tobacco is a bad thing; but I certainly do not think that marihuana is to be compared with tobacco.

Mr. MANSFIELD. I understand that there are various strains of marihuana; that the so-called oriental marihuana is a good deal stronger than the marihuana grown in this hemisphere.

I understand also that marihuana smoking has become a habit among a good many of our troops in Southeast Asia; that it has becomc more prevalent in colleges; that it is having a decided effect in high schools; and that in some instances its use is occuring in the upper grades of elementary schools.

I have been trying for some time to get some information on this subject, but it seems to be awfully hard to come by. For example, I have been shocked by the fact that different kinds of sentences are imposed merely for the possession of marihuana.

One of the most shocking instances I recall was the sentencing of a University or Virginia student to 20 years in prison

merely for the possession of marihuana. I was glad to note that former Gov. Mills Godwin released the young man from the penitentiary. He had been sentenced to 20 years, and I think that this incident, at least so far as that individual is concerned, has been cleared up.

However, it is my understanding that severe penalties are imposed, some of them mandatory, in some States, and that even Federal penalties under certain circumstances provide for mandatory imprisonment.

I should like to see in the bill—perhaps it already is, but if it is not, I hope that the distinguished Senator from Connecticut will propose it—a provision for a high-level commission by means of which some of the country's outstanding doctors, psychologists, and other experts in the field of narcotics and other possible addictives could conduct an in-depth study into this particular matter.

Certainly we shall have to face up to the condition in some way because of the increasing use of marihuana among so many of the younger people of the country, not only for their own protection, but also for our knowledge, so that we can legislate and speak with some degree of expertise on a subject which has become more important with each passing day.

I thank the Senator from Connecticut.

Mr. DODD. I thank the distinguished Senator from Montana, the majority leader.

First, I may say that the bill does contain a provision for just such a study as the Senator has referred to.

Second, I respond by saying that he is absolutely correct about the marihuana situation. I am told by reliable persons that marihuana is considered a primary law enforcement and health problem not only in the armed services in Southeast Asia but among our troops in Europe. That is how drastically the use of marihuana has increased in our armed services.

The Senator is quite correct in saying that there are different grades and strains of marihuana. Certain types have some of the same effects as LSD. As I said, certain forms bring on insanity and suspected brain damage. That is why the Senator from Montana and many others of us have been so greatly worried about the problem.

I can truthfully and honestly say that I am deeply grateful to the majority leader for helping to get this measure where it is today. Without his help, it would not be before the Senate. I think we will perform a high service for the country to debate the bill, so as to pass a good bill, one which will do the greatest possible good and one which is so sorely needed.

Mr. MANSFIELD. The bill is not only sorely needed; it is long overdue.

Mr. DODD. Yes, it is long overdue.

Mr. President, I see in the Chamber the esteemed Senator from Michigan (Mr. HART), who again is lending his support to this measure. Bringing this legislation to this stage of enactment has been a long, hard battle. It has taken years to bring it to this stage of perfection, and at each step along the road Senator HART has been at hand when there was hard work to do. He has given us his help and his support.

I shall certainly continue to seek his counsel and advice as the debate proceeds.

Mr. HART. I thank the Senator from Connecticut for his gracious remarks and assure him of my support for this important measure.

Mr. McCLELLAN. Mr. President, will the Senator yield?

Mr. DODD. I am happy to yield to the Senator from Arkansas.

Mr. McCLELLAN. I call to the Senator's attention section 707 of this bill, which is the immunity and privilege section. I should like to make this comment about it:

In the bill we passed yesterday, we repealed all immunity statutes, and passed in that bill a title that deals with immunity for all offenses. There is a difference between the two, and since we are not going to vote on this measure today, as I understand—

Mr. DODD. That is right.

Mr. McCLELLAN. I invite the attention of the distinguished Senator from Connecticut to the provisions of S. 30, passed yesterday by the Senate, which attempts to modify and make uniform all immunity statutes, and I would ask him, or suggest, that he have his staff review that provision and consider accepting an amendment to substitute those provisions of S. 30 for the provisions in section 707. This is not critical.

Mr. DODD. No, I understand.

Mr. McCLELLAN. The idea is to try to keep the immunity statutes uniform with respect to all offenses.

I make that suggestion so that, over the weekend, the staff and the Senator can consider it. That, in my judgment, is something that we need to do, to keep our laws in these areas as uniform as possible. I make that as, I hope, a constructive suggestion to the Senator.

Mr. DODD. It is.

Mr. McCLELLAN. I take occasion, now, to commend the Senator and his committee for their very dedicated work in bringing out this bill, in processing it and bringing it to the Senate for consideration this early in the session of Congress. I am sure that the experience we had with S. 30, which was passed yesterday, is pretty well applicable to the Senator's experience last year. We all worked hard to process these bills and get them ready. It was not with a foot-dragging attitude on cur part; it takes a lot of testimony, and we get into some rather technical areas with legislation dealing with crime, because people's rights are involved. We try to reach the criminal, the law violator, and see that he is punished, without at the same time violating, trespassing, or infringing upon the civil rights and personal rights of our citizens. It gets into a delicate area, and it takes a lot of study and a lot of hard work.

I have not gone into every detail of this bill, but I know the general objectives of it. I generally support, and I commend the Senator and his committee for the hard work they have done. I hope he will take the suggestion I have made as one that is intended to be constructive and not critical.

Mr. DODD. Mr. President, let me say to the Senator from Arkansas that I think all of us in the Senate consider him the dean of law enforcement. I say this in tribute to his understanding of the causes and cures of crime. His reputation, not only among us in this body, but abroad in the land, is well merited.

Mr. McCLELLAN. The Senator is very kind. All I have in mind is to try to be helpful.

Mr. DODD. I do not mean to be fulsome, but I think what I have said is true, and I think all Senators will agree with me.

For the record, I wish to say that the Senator from Arkansas was of tremendous help to our committee in hammering out this legislation as we finally reported it. I can assure him that his suggestion about the immunity and privilege section in S. 30 will be taken most seriously by me. Based on his vast knowledge I can say right now, without having had a chance to go into it, that this is probably what we should do.

Mr. McCLELLAN. As the Senator will remember, I supported this provision when we were processing the bill. I think I may have indicated to the Senator at some time that I might have one or two amendments along this line, just to try to be constructive.

Mr. DODD. I do remember that. I will be glad to consider any amendments the Senator from Arkansas has to offer as I am sure he wants to improve this bill in any way he can.

Mr. McCLELLAN. I know the Senator and his staff will consider it and consult about it. I thank the Senator for yielding.

Mr. DODD. Yes. Mr. President, I was saying that many of these young people come from adequate suburban homes, and some of them are college students on the road to professional careers.

A National Institute of Mental Health survey of a student sample in a large university showed that in 1967, 21 percent of these students had previous experience with marihuana. The same sample in 1968 revealed that 57 percent had then tried marihuana.

I am sure if another survey were taken today the percentage would be even higher.

With respect to sedatives—the "goof balls," stimulants—the "pep pills," and tranquilizers—the "happy pills," another Institute survey in 1967 revealed that 51 percent of 1,028 persons interviewed had used one or more of these drugs.

Still another National Institute of Mental Health study showed that as many as 50 percent of the high school students in certain areas have had some experience with marihuana.

In truth we do not know how many people in this Nation abuse drugs of one type or another.

Drug offenses have been called the crimes without victims.

The criminal drug peddler and his victim, the drug user, both take every precaution to avoid detection. This makes drug law enforcement extremely difficult.

Drug crimes have the shape of an iceberg, the bulk of which is hidden from view.

There are an estimated 200,000 to 250,000 heroin addicts in the United States.

There are an estimated 12 million people who have tried marihuana.

But these numbers may still only represent the visible part of the iceberg. There is an untold number of other users of these drugs that simply cannot be determined at the present.

There is another unknown number of users of amphetamines, barbiturates, and related drugs. Whatever the numbers involved, they are obviously substantial. In any case, there appear to be more than enough customers for the 4 billion amphetamine pills which are annually diverted to the illegal traffic. Legitimate medical use can account for only half of the 8 billion "pep pills" produced annually.

Within the past decades, we have become a medicated society. Americans are led to believe that there is a pill for everything, for every ailment, real or imaginary.

And thus we take pills to go to sleep, to wake up, to stimulate our responses, to quiet our nerves, to lose weight or to gain weight.

Our fascination with pills has not been an accidental development.

Multihundred million-dollar advertising budgets, frequently the most costly ingredient in the price of a pill, have, pill by pill, led, coaxed, and seduced the post-World War II generations into the "freaked-out" drug culture that is now the source of one of our most serious problems.

Our advertising and public relations geniuses for years have been subtle-selling our young on the comfort, beauty, and attractiveness not only of cosmetics, but drugs of all kinds.

Detail men employed by drug companies propagandize harried and harassed doctors into pushing their special brand of palliative. "Free samples" in the doctor's office are as common nowadays as inflated fees.

If there is no connection, there is a similarity in the free sample "modus operandi" of the "drug detail man" and the "dope pusher."

Slick magazines, gossip columnists and the fringe press for years have featured items and articles about this or that movie star, socialite, and jet-setter and the "thing" they have with pot, pills, and psychiatrists.

Too much of America has been sold on imitating these "heroes."

In the medicine chests in the homes of most teenagers in America there are sleeping pills, pep pills, and tranquilizers.

If mom and dad use them the reasoning goes, they cannot be that bad.

This, I am convinced, is a major cause of the "freaked-out" generation.

INADEQUACY OF EXISTING LAW

Mr. President, we are forced to admit that drug abuse has run rampant among young people despite the existing laws on the books.

Existing laws have failed to reduce or even control drug use and addiction.

They have failed, miserably, to hold the line on the smuggling of opium, heroin, marihuana, hashish, cocaine, peyote, and other foreign products smuggled into this country.

They have failed to control the yearly diversion of 9 billion American-made dangerous drugs, the pep pills, sleeping pills, tranquilizers and hundreds of combinations of each that schoolchildren across the country are popping into their mouths like so many raisins.

They have failed to separate the sick heroin addict from the occasional marihuana or pill user. Instead, we have yielded to know-nothing demands to lump them all together and throw them into overcrowded prisons where we punish them all alike instead of treating them according to their needs.

As if this unthinking approach were not bad enough, we now find that the traffic in both marihuana and narcotic drugs is spreading to age groups and economic levels which were previously drug-free.

This condition has caused a fearfulness to sweep neighborhoods and communities much as typhoid and polio did in other years. This is a fear that is causing further despair in the ghettos, deepening the frustration of the city workers, striking with unaccustomed fury into the middle class, and dismaying the wealthy and cultured and professional families as few problems in our history have done.

Measured against this trend, there is really no wonder that the stigma historically attached to drug abuse is lessening.

That is not to say that society is in favor of abandoning all controls over drugs, or of legalizing marihuana. Rather, people have recognized what government has been afraid to see, or to say: There is now in this Nation a drug culture that calls for a program comprising more than law enforcement and the administration of criminal justice.

Few parents or teachers are willing, at least at the beginning of drug abuse, to turn their children or students over to law-enforcement agencies. They need a better way out than a 2- or 5-year mandatory prison sentence.

I know such families myself. They are within my circle of acquaintanceship and sometimes are close personal friends. I know what has happened to them—to the fathers, the mothers, the sisters, and the brothers. No one can tell me that it is an answer to say, "Your son has to be thrown into a penitentiary for years."

This is why the main thrust of the penalty provisions in this new bill is to eliminate mandatory minimum sentences for all drug offenses, except for a special class of professional criminals.

The new penalties will allow the judge to use his discretion in his imposition of sentences for drug offenders. It will allow more severe sentences in the case of pushers and traffickers in heroin and a lesser sentence of up to 1 year for offenders involved with the simple possession of marihuana—many times a handful of cigarettes. Many times the subject is a high school student, and many times it is the first time he has had two or three marihuana cigarettes in his hand. But, under the law, he goes to prison for 2 years, and the judge has nothing to say.

HIGHLIGHTS OF THE CONTROLLED DANGEROUS SUBSTANCES ACT

Mr. President, as I have pointed out, we really do not know the total number of addicts and drug users in America because many people fail to seek help for their drug dependence for fear of the severe punishment prescribed under present law.

We have allowed the drug problem to keep growing far too long. Each day we hesitate to take action more young people are jeopardized by the multitude of dangerous drugs that abound across the land.

Because of these reasons I call for speedy passage of the bill before us, the "Controlled Dangerous Substances Act."

The proposed legislation will have far-reaching and many-sided effects on the drug situation.

It will, for the first time in history, bring about a unified approach to narcotics and dangerous drug law enforcement. It will combine the Federal Bureau of Narcotics and the Bureau of Drug Abuse Control in the Justice Department.

I believe that is where it ought to be.

It will vest the authority and responsibility with respect to the control of narcotics and dangerous drugs with the Attorney General.

It will coordinate and codify the present diverse drug laws in one comprehensive piece of legislation.

It will substantially reinforce the controls over the traffic in drugs by regulating the manufacture, distribution, and the export and import of narcotics and other controlled drugs.

It will include three major tranquilizers of abuse in the list of controlled drugs, librium, valium, and meprobamate. There has been a significant diversion of these drugs into illegal channels and there is evidence they have been substantially abused.

It will create a committee to study all aspects of marihuana. The committee will be required to report its findings together with recommendations to the President and to the Congress within 2 years.

It will improve drug law enforcement by making it easier for officers to enter premises where large-scale drug transactions are suspected to take place.

And perhaps most important, the bill will establish a more realistic penalty structure for drug offenses.

In the past we have often imposed severe punishment on the victim of the drug traffic, while the criminal trafficker has remained beyond our reach.

The new law will impose severe punishment for the professional criminal in the drug trade, but provide more flexible penalties for the less serious drug offenders.

Mr. President, the Juvenile Delinquency Subcommittee has been involved with the drug problem for a long time, long as I have been chairman—approximately 10 years.

Since 1961 when I became chairman we have conducted investigations and hearings concerning virtually every phase of the drug problem.

As a result, in 1965 we helped pass the drug abuse control amendments which established a whole new machin-

ery for drug control under the Bureau of Drug Abuse Control. I am proud of that, and the subcommittee is proud, and I think it is entitled to be.

In 1966 I introduced for the administration S. 2152, which became the Narcotic Addict Rehabilitation Act, the first Federal law to provide treatment in lieu of punishment to addicts.

Each of the above laws became a landmark in the history of drug control.

Mr. President, the bill we consider today, the "Controlled Dangerous Substances Act of 1969," will have equally far-reaching effects. More than any law before it, this act will bring us closer to an effective management of the explosive drug situation in this country.

EXPLANATION OF THE TITLES OF THE ACT

At this point, Mr. President, I will summarize the contents of each of the titles in the bill.

TITLE I

Title I sets forth the findings and declarations which established the need for this legislation. It also defines the terms used in the bill.

More specifically, this title reaffirms the Federal Government's role in drug control. Basically this role is to regulate the legitimate drug trade to prevent diversion of medically useful dangerous drugs into illegitimate channels and to help reduce the criminal traffic in all narcotic and dangerous drugs on the local, national, and international level.

Under this title we also recognize that many of the drugs covered in the bill are necessary to maintain the health of the American people. However, it is equally clear that when misdirected and abused the medically useful drugs as well as the nonmedical drugs present a serious danger to the population.

TITLE II

Title II separates all of the substances controlled under the act into four schedules and vests the authority for administering the act in the Attorney General.

(At this point Mr. ALLEN took the chair as Presiding Officer.)

Mr. DODD. Mr. President, these schedules of drugs are based on the degree of their abuse potential, known effects of the drug, degree of harmfulness, and the level of accepted medical use. Each of these schedules correspond to the penalties established under title V. Violations involving the more dangerous drugs such as the hard narcotics are subject to more severe penalties than offenses involving the less harmful substances.

Let me make a point here regarding the other provision of this title dealing with the administration of the act.

There has been some controversy over whether or not the Justice Department has the medical knowledge and expertise to schedule and reschedule the different drugs. I believe this difficulty is resolved by another provision of this title which requires the Attorney General to seek advice from the Secretary of Health, Education, and Welfare and the Scientific Advisory Committee on decisions relating to adding, deleting or rescheduling of the controlled drugs.

TITLE III

Title III regulates the manufacture, distribution, and dispensing of controlled drugs.

The objective here is to establish the registration of persons involved in the legitimate drug trade, to provide for records, reports, order forms and prescriptions to cover the dispensing and other transactions involving controlled drugs.

This title also authorizes the Attorney General to establish production quotas for the more dangerous drugs in schedules I and II, such as morphine and methadone, which would be consistent with the medical, scientific, and industrial needs of the United States.

All of these provisions are designed to reduce the diversion of drugs from the legitimate course of commerce and use into illegal channels. This is important in the face of evidence that about half of the annual production of amphetamine and barbiturate drugs, or between 8 and 9 billion pills, have been diverted to nonmedical use.

These regulations will also help reduce the illegal manufacture and traffic in these drugs eminating from clandestine laboratories.

TITLE IV

Title IV regulates the importation and exportation of controlled drugs.

The Attorney General is required to restrict the importation of drugs to amounts necessary for medical, scientific, and other legitimate purposes.

The controls are particularly strict on the importation of narcotics.

Some concern has been expressed that any importation of narcotics might increase the danger of diversion and lead to unfavorable changes in price structures for drugs with a narcotic content.

I am satisfied that the bill contains adequate safeguards against such eventualities since added importation of narcotics would be possible essentially only in emergency situations that threaten the medically required supply of such drugs.

We went into this with great care and heard from the Attorney General and others in the Department of Justice, from competent lawyers outside of the Government, and I am completely satisfied that we are right about this.

Equally strict controls are imposed on exportation of the drugs controlled under the bill, particularly narcotics.

Exportation is subject to specific criterion involving legitimate need, safeguards against diversion and misuse, and to proper clearance of such exportation by the Attorney General. Exportation of narcotic drugs is further restricted to countries that are parties to international treaties on drug control.

TITLE V

Title V deals with the penalties for drug violations established under this act. Specific penalties are set forth for illegal manufacture, distribution, dispensing, importation, exportation, possession and related offenses.

This is an important section of the bill since it establishes much more realistic penalties for drug law violations. The new penalties were established with the knowledge that the existing high penalties and particularly the mandatory minimum sentences have failed to control or reduce the drug problem.

The main thrust of the new provisions is to eliminate mandatory minimum penalties for all violations except for a new category of professional criminals involved in major trafficking in drugs—a new category, new only in the sense that it is identified.

The professional criminal is subject to a penalty of a mandatory 5-year sentence to life and a fine of $50,000. The penalty doubles for the second offense, that is, 10 years to life and a $100,000 fine. There can be no suspension of sentence, probation, or parole.

Other offenders are penalized without mandatory sentences. Those selling schedule I and II narcotics such as heroin and opium can draw a sentence of up to 12 years and a possible fine of $25,000. For schedules I, II, and III sales of non-narcotics such as marihuana, "pep pills" and the like, the sentence is up to 5 years and a possible fine not exceeding $15,000. A special parole term of from 2 to 3 years is required for each of the above offenses. Violators are eligible for suspended sentences and probation.

Offenses relating to the less serious drugs in schedule IV, such as the codeine cough syrups, are subject to a sentence up to 1 year and a possible fine up to $5,000. Here, again, the sentence can be suspended and probation and parole are available.

Second offenders in any of these categories can receive up to twice the penalty provided for first offenses.

There are several provisions directed at the problem of first offenders and minor drug violators. They include:

A first offender provision relating to possession that allows a conditional discharge of the criminal proceedings upon fulfillment by the offender of any terms and conditions imposed by the court;

A provision that possession for one's own use of any controlled drug would be treated as a misdemeanor subject to a possible sentence of up to 1 year and a fine of up to $5,000. Suspended sentence, probation and parole are allowed. Second offenses could double the penalty; and,

A provision to limit the penalties for sale or other distribution of small amounts of marihuana. This is intended to cover the type of situation where a college student, for example, gives away one or two marihuana cigarettes, receiving payment only to cover his cost of the marihuana.

That title covers the broad range of sentencing and I think gives us a much more realistic way of dealing with this aspect of the drug problem. We would not have the situation that the majority leader spoke of this morning of some youngster getting 20 years in prison because he had two or three marihuana cigarettes in his possession. That situation was finally rectified, but it took a great deal of notoriety in the press and the action of Senators from that State and the Governor to get this matter straightened out.

That should not happen. That does not help us in getting this problem solved. I think we can do better than that and that is what this bill before us is designed to do.

This title further provides specific penalties ranging from fines to several years imprisonment for civil or criminal violations by those involved in the legitimate drug trade.

Typical offenses in this area would involve counterfeiting, failure to keep records, illegal transfer of drugs, and misrepresentation.

This provision is here only because our studies and our investigations demonstrate that something has got to be done. There are people who will counterfeit drugs or who will falsify records and they must be brought to book.

Finally, there is a provision doubling the penalty that would otherwise be imposed for persons at least 18 years old who distribute drugs to persons under 18 who are at least 3 years their junior.

I do not think I ought to labor that oar very hard. That is the kind of thing that has to be severely punished. And this is the most effective way in which to do it.

TITLE VI

Title VI sets up certain administrative provisions for implementing the act.

It authorizes the Attorney General to provide educational and research programs, to cooperate with State and local agencies in implementing this act, to appoint an advisory committee of experts to advise him on the scheduling of drugs and to hold hearings, and issue subpenas as part of his enforcement activities.

The title further provides for judicial review of the Attorney General's decisions under this act. This is important because some concern has been expressed in the subcommittee regarding the wide scope of the Attorney General's authority with respect to this law.

TITLE VII

Title VII establishes certain enforcement provisions.

Notably the title provides for search warrants which allow entry without notice into premises for the purpose of seizing drugs and other property that might otherwise be destroyed, or to protect human life.

The argument for this provision is simple. Since drugs can be easily destroyed and since apprehension of serious traffickers is the best way to control the drug problem, this so-called no-knock provision is an invaluable aid to our narcotic agents.

This title also provides for administrative inspections and warrants, for seizure of certain property involved in drug offenses, for privilege and immunity against self-incrimination of certain witnesses and for prior notification in some cases to persons to be prosecuted under this act.

I would like to point out here that this morning the distinguished Senator from Arkansas called to my attention on the floor the fact that we have now passed S. 30 which has a very good provision with respect to privileges and immunities, and he suggested that we look at it. I think the Senator is absolutely right. It is my intention to determine if that portion of this bill should conform with the the same provisions of S. 30.

Further this title places the burden of proof on defendants to rebut the Government's presumption of violation of the act, it protects Federal enforcement officers from liability for drug enforcement activities and it allows expenditure of Federal funds for informants exposing violations of the act.

TITLE VIII

Title VIII creates a committee of experts to study all aspects of the marihuana problem.

These include:

Identification of the gaps in our knowledge of marihuana;

A study of the medical and social aspects of marihuana;

A study of the extent and nature of marihuana use;

A study of the effects and pharmacology of marihuana;

A study of the relation marihuana use has to crime and delinquency; and

A study of the relation between marihuana and the use of other drugs.

I consider this study one of the most important provisions of this legislation. If we are ever going to understand this widely used drug and if we are ever going to learn how to control it, this study is vital to that end.

I remember, it was 2 years ago, that our subcommittee conducted hearings involving narcotics. We heard from expert witnesses, physicians, scientists, sociologists, educators.

When we got through, I remember saying to Senators that I did not see how we could legislate on this question because of the state of the record. There was such a conflict of opinions on the part of these eminent scientists, educators, and physicians.

This is really how this provision came to be written into the bill.

As a result of this experience, we found it was just impossible to legislate adequately until we knew.

The study is to be completed within 24 months of the effective date of the act at which time the committee will submit to the Congress and to the President a report with its recommendations on the control of marihuana.

At that point, the Congress will be in a much better position to decide, once and for all, how it wants to handle the many-sided marihuana problem.

TITLE IX

Title IX contains miscellaneous provisions.

It repeals other laws which are replaced by this act; it sets forth certain changes in the United States Code; and, it provides that the act does not affect proceedings pending under previous laws. It also establishes severability of the provisions of the act. It provides appropriations and sets down the effective date of the new law.

Mr. President, these are the major provisions of the bill. We considered them in lengthy hearings held by the Subcommittee on Juvenile Delinquency, and we considered them for several days in the full Judiciary Committee.

I outlined the need for speedy action on this bill.

I am certain that the public and particularly the parents of our young people want this law passed without delay.

I get letters from my constituents and I get letters from constituents of other Senators from across the land urging action on the drug problem. We all get this kind of mail and when we go home we hear about it.

I do not believe this bill contains major controversies. There are some differences about the bill but they can be hammered out on the floor of the Senate. Most importantly, I want to say that this is really a nonpartisan bill. This is not a party matter and it never was. It was not a party matter in subcommittee or in the full committee and it is not now.

The Senator from Nebraska (Mr. HRUSKA) and I worked together in introducing this bill. Many people contributed to making this legislation possible in the Senate. Many people put in a lot of time, effort, and work. Many Senators helped tremendously. I cannot think of a Senator who has not at one time or another said something to me about this problem and who has not offered to be of help. This was not unusual on this bill. We could not afford politics in this matter and politics never came up.

The passage of the measure has been repeatedly called for by the administration and the President. The Attorney General wants this bill passed. He knows the need for it and he wants to get at the problem.

I say this because I fervently hope we can act favorably on the bill in the shortest possible time because just as that clock ticks off another 5 minutes another youngster in the United States is arrested for a drug offense. I say we cannot afford this extravagant waste of our young people.

I see the distinguished Senator from West Virginia (Mr. BYRD) and the distinguished Senator from Michigan (Mr. GRIFFIN) in the Chamber. Does the Senator from Michigan wish to speak?

Mr. GRIFFIN. Mr. President, if the Senator from Connecticut will yield briefly, I have a very few remarks to make and a statement that I shall put in the RECORD.

Mr. DODD. I have concluded my remarks at this time. I am happy to yield to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I wish to commend the distinguished Senator from Connecticut for his statement today outlining this measure and for the leadership which he and other Senators on his committee have provided in bringing the measure to the floor of the Senate.

I agree with him that the support for this measure is not partisan and reaches across the aisle that divides the party.

There has been some criticism, perhaps, that the bill did not reach the floor sooner, but I realize at the same time that members of the committee did work very diligently in hearings that were necessary. Now that the bill is before the Senate, I think we should commend those who have brought it here and do our

best to see that it is passed by the Senate as quickly as possible and in the most effective form possible. I wish to indicate my strong support.

Mr. President, the last significant legislation to be enacted by Congress dealing with the drug problem in the United States was the Drug Abuse Control Amendments of 1965. This law amended the Federal Food, Drug, and Cosmetic Act to bring under Federal control several classes of abuse drugs not previously covered including central nervous system stimulants, depressants and hallucinogens. Although the Drug Abuse Control Amendments were subsequently modified somewhat in 1968, in essence, the law today is very much that which was enacted 5 years ago. And yet, we all know that during that 5-year period from 1965 to the present time, the drug abuse problem has continued to grow, and to infest and affect sections of our society which for years had enjoyed an immunity by isolation.

For years, too many people have looked upon drug abuse as a characteristic of an alien society, something foreign, something to be abhorred but something that represented no threat to our own way of life.

Well, I would not be saying anything today to take note of the fact that drug abuse is no longer confined to remote or isolated segments of our society. Unfortunately, the problem is found almost everywhere today.

There is an increasing public awareness of narcotic use, and there are new efforts to try to break this chain of misery. We hear of half-way houses and methadone maintenance programs. These are worthy efforts that deserve strong support. Some of the programs and efforts already in effect are impressive and have done a great deal of good.

But, previously, the steps which have been taken are not enough. The quantity of abuse drugs, available on the illicit market, on the street corners, in the schoolyards, at truck stops, has increased at an alarming rate. Literally tons of these drugs are confiscated each year and removed from the illicit market by local, State, and Federal law-enforcement agencies. The Federal Bureau of Narcotics and Dangerous Drugs advises that the source of a large percentage of these drugs is the legitimate drug industry, and that they are diverted from the legitimate industry into illicit channels of distribution in the United States by a variety of means. Still other dangerous drugs are lawfully manufactured in the United States and exported to foreign countries only to end up back in the United States in the illicit street traffic.

The question now is what can be done to prevent and eliminate this illicit traffic in dangerous drugs? I believe that an important part of the bill before as—the controlled Dangerous Substances Act. This bill includes strict regulatory provisions aimed at preventing the illicit diversion of drugs and stopping the illicit flow of dangerous drugs into the United States from other countries.

Title III of the act sets up strict registration requirements for those who manufacture, distribute, or dispense any controlled dangerous substance. The Attorney General will be authorized to inspect the establishment of a registrant or applicant for registration to insure that he is conforming to the requirements of the law or will be able to do so if he is registered.

In determining whether or not to grant a request for registration the Attorney General is to consider the general criteria of public interest and our international obligations. He will also consider whether the registrant would maintain effective controls against diversion of the controlled dangerous substances into other than legitimate medical, scientific, or industrial chnnels. The Attorney General would consider the record of the registrant, and whether he has consistently complied with applicable Federal, State, and local law.

Title IV contains restrictions on both the importation and the exportation of certain controlled dangerous substances. Although the controls here are aimed primarily at the control of narcotics, the law will also encompass a number of dangerous nonnarcotic substances. Section 404 specifically forbids the importation of nearly all controlled dangerous substances into the United States for transshipment to other countries without prior approval of the Attorney General. And, in any event, the Attorney General must be given advanced notice of any importation for transshipment even if approval has been granted.

Other features of the bill aim at preventing diversion by requiring strict recordkeeping. Those who handle or manufacture controlled dangerous substances, with few exceptions, are required to maintain detailed records of receipts and disbursements. Records will be available for inspection by the Bureau of Narcotics and Dangerous Drugs. Failure either to keep the records or make them available for inspection will subject the violator to severe penalties including forfeiture of his supply of controlled dangerous drugs.

A new recordkeeping feature added by this bill is the requirement for an inventory of all controlled dangerous substances at least once every 2 years. This seemingly simple provision should prove to be a valuable aid in stopping diversion before it gets out of hand. Once an inventory has been taken, investigators of the Bureau of Narcotics and Dangerous Drugs will have a firm starting point to determine the actual quantities of drugs a particular registrant should be accountable for. Subsequent drug accountability audits will not deal in approximations, but rather in very precise figures. This will be an aid to both the legitimate dealer in dangerous drugs and those charged with the enforcement of the drug laws. The legitimate dealer will benefit since he will receive accurate advance notice of shortages, possibly due to thefts by his employees, so that he can take corrective action before incurring a large financial loss. Law enforcement will benefit both by the deterrent effect of everyone knowing that substantial shortages will be subject to Federal investigation and by enabling the Attorney General to build prosecutable cases where the situation warrants such action.

Time will tell how effective this legislation will be as a tool in the battle to bring drug abuse under control. Perhaps it will not provide a perfect or complete answer to this difficult, perplexing problem. But enactment of this legislation certainly would be a long step in the right direction.

The PRESIDING OFFICER. The bill is open to amendment.

Mr. ERVIN. Mr. President, I ask unanimous consent that the name of the distinguished senior Senator from Massachusetts (Mr. KENNEDY) be added as a cosponsor of amendment No. 436 to S. 3246. This amendment is submitted by myself, and is now cosponsored by a majority of the members of the Judiciary Committee. The nine members, a majority of the committee which now cosponsor the amendment, are Mr. BAYH, Mr. BURDICK, Mr. COOK, Mr. EASTLAND, Mr. FONG, Mr. HART, Mr. MATHIAS, and Mr. KENNEDY.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I do not care to make the main argument on my amendment now, but I will call it up later, and ask that it be made the pending business.

Evidently, the Department of Justice thinks my amendment has a lot of merit because two of its staff members prepared a 66-page statement to try to justify a provision of this bill which would make it lawful for law enforcement officers in narcotic cases to emulate the example of burglars and enter the dwelling houses of citizens without notice, either by stealth or by force.

Mr. DODD. Mr. President, will the Senator yield?

Mr. ERVIN. I yield to the Senator from Connecticut.

Mr. DODD. The Senator said he will not present his major argument now. I know how serious this matter is and how strongly he feels about it. For myself, I am compelled to say that I have an open mind on this proposal. I do not want to be placed in the position of an advocate of or as the one pressing for action. This is one of the toughest questions I have faced since I have been in this body. I am constantly asking myself, What price do we put on our precious constitutional protections? Is the circumstance which confronts this Nation at this hour with respect to drug abuse so bad that we are willing to pay the price of impairing our constitutional protections, or not? On the one hand I say to myself, better that 1,000 peddlers escape than that one decent man be hurt by the infringement of his constitutional rights.

On the other hand, I am distressed at the death and destruction these dope peddlers wreak on our children and I wonder if we should not give our law-enforcement people every possible chance to put the dope peddlers behind bars.

The Senator from North Carolina, whom I greatly respect as an outstanding constitutional lawyer, is not in an adversary proceeding here. I certainly am going to approach this matter as one who wants to hammer it out by discussion and by debate, not in an adversary manner.

I hope that is the climate in which we

can move. So I am happy that the Senator will put his amendment over until the first of the week.

Mr. ERVIN. Mr. President, I wish to make one or two statements about my amendment. First, I would like to commend the able and distinguished Senator from Connecticut, who has labored to get a law which would protect society against the fearful traffic in marihuana and other drugs covered by this act.

I would like to absolve the Senator from Connecticut from responsibility for inclusion of this "no knock" provision. It did not originate with him, and it was not in the legislation which he introduced, but it is legislation which, for some strange reason, is sharply advocated by the Department of Justice. The Department, in my opinion, wishes to strike down by this act one of the most basic rights of all American citizens—a right which was extolled, long generations before America was discovered, by the prophet, Micah. In the fourth verse of the fourth chapter of Micah, the prophet speaks of the time when every man shall have a right to dwell under his own vine and under his own fig tree, with no one to molest him or make him afraid.

For the life of me, I cannot understand why the Department of Justice should be so desirous of striking down the right of American citizens to enjoy privacy in their own homes.

Four of the Supreme Court Justices, in the case of Ker against California, 374 United States 23, said flatly that this "no knock" provision will be unconstitutional as applied to virtually every narcotic case that will arise under it. I do not know why the Department of Justice insists on including in the bill a provision which, instead of aiding in the enforcement of the law, will, in the long run, impede law enforcement. This is true because it will give every person entitled under the law to this protection against such search an opportunity to raise the question as to whether any information or evidence which was obtained was obtained in violation of the fourth amendment.

I stand on the proposition that every man's home should be his castle, and that the Congress of the United States, in its zeal to enforce a specific criminal statute, should not go on record as making it legal for law enforcement officers to enter the private homes of American citizen in the same manner in which burglars now enter.

A great English statesman, William Pitt, Earl of Chatham referred to this problem prior to the writing of the fourth amendment. There was a debate in the Parliament on searches, incident to the enforcement of an excise tax on cider, that undertook to allow officers in England, in order to discover where the people were manufacturing cider without paying an excise tax, to have access to their homes without search warrants or without apprising them of their presence, or their purpose, or their authority.

I stand on what William Pitt said at that time:

> The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter—the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!

I submit that one of the basic rights of the people is to be able to enjoy privacy in their own homes, and not have their homes searched under process of law, unless the officer of the law has a search warrant based on facts which are the truth, and, when he knocks at the door, apprises the person of his purpose and tells him that he has the authority of a search warrant to enter.

Under section 702(b), to which I object and to which my amendment is directed, an officer of the law can break in a man's house without advising him that he is there and without ever telling him that he is an officer of the law and without ever telling him he has a search warrant.

Under the decisions of every State of this Union, and under the decisions in England—from which our common law is derived—a householder under those circumstances has the right to kill an officer of the law who attempts to enter under those circumstances, and his killing under the law, under those decisions, would be justifiable homicide.

The fourth amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Under this bill, which is an excellent bill in all other respects, an officer would have to get a search warrant, but he would not have to tell anybody he had it. The only way he could get a search warrant in 995 cases out of a thousand would be to swear to facts which were false at the time they were sworn to; that is, that the occupants of the house would destroy the evidence, the narcotics or the marihuana, if he did not break into the house without notice to them.

It is an absurdity to maintain that an officer who goes before a judge or a U.S. Commissioner for a search warrant at a place which may be miles and miles from the house to be searched can have any knowledge that the people are going to destroy the narcotics which they obtained for their own use or for peddling to others, when they do not even know he is coming and have no knowledge of the issuance of the warrant.

I say it is an unreasonable search and seizure in itself for an officer of the law, armed with a search warrant, to conceal that fact from the occupant of the house and to break into the house without notice to the owner.

While I deplore the use of marihuana, I think it is better to preserve the liberties of American citizens as basic as those set forth in the fourth amendment than it is to get one or two persons for violating the law.

If all the members of the Judiciary Committee were present at the time the bill was acted on, this provision would have been stricken out, because nine of them—a majority—have joined in this amendment to strike it out.

Mr. DODD. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from North Carolina yield?

Mr. ERVIN. I yield.

Mr. DODD. If the Senator has not concluded, I do not want to interfere with his statement.

Mr. ERVIN. The Senator may go ahead.

Mr. DODD. I did not want to interrupt the Senator.

I believe I am correct when I say that the 66-page document you referred to is an article written by Michael R. Sonnenreich and Stanley Ebner. This is the same document that I had reviewed several weeks ago. This is a law review article, submitted for publication is it not?

Mr. ERVIN. Well, it was written for a twofold purpose. The first purpose is to make it clear that the Department of Justice wants to make it lawful for officers who are charged with the duty of enforcing the narcotics law to enter dwelling houses of our citizens just as burglars now enter them. That is the first purpose for its being produced here on the eve of the consideration of this measure; and, as a second purpose, they hoped to find a law review that would publish it.

Mr. DODD. It was written by two distinguished lawyers. I happen to know Mr. Michael Sonnenreich, who is a first-class legal scholar. He has been of great help to the subcommittee and the full committee.

Mr. ERVIN. I certainly agree with the distinguished Senator from Connecticut in the idea that the authors are very distinguished lawyers, even though they write this at this particular time for the purpose of robbing American citizens of one of their most basic constitutional and legal rights.

I do submit, however, that they could devote their fine legal talents to a better cause than that of trying to induce the Senate to adopt a provision which will make it lawful for law enforcement officers to enter the private homes of Americans in like manner as burglars now enter them; and that is precisely what this no-knock provision does.

I thank the Senator. I wish to call up my amendment, though I do not care to make my main argument on it at this time.

AMENDMENT NO. 436

I call up my amendment No. 436, and ask that it be made the pending business.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from North Carolina (Mr. ERVIN), for himself and others, proposes an amendment (No. 436) to delete subsection (b) of section 702.

(The language proposed to be stricken is as follows:)

> (b) Any officer authorized to execute a search warrant relating to offenses involving controlled dangerous substances the penalty for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States Magistrate issuing the warrant is satisfied that there

is probable cause to believe that if such notice were to be given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, and has included in the warrant a direction that the officer executing it shall not be required to give such notice: *Provided,* That any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

Mr. DODD. Mr. President, I had not intended to speak again this morning, but I think I am required to say something about this article prepared by Mr. Michael R. Sonnenreich and Mr. Stanley Ebner, to which the distinguished Senator from North Carolina has refered. As I said, both of these men are distinguished legal scholars; responsible officers of the Department of Justice, who have worked closely with the subcommittee and have been of great help in the preparation of the bill.

Because the article examines in exhaustive detail the constitutional implications of this provision, which certainly is an important part of the proposed regulation, I think it should be presented to the Senate, and I am sure the Senator from North Carolina will agree. It certainly should be considered by Members of this body as they approach their decision with respect to this legislation.

I would point out that I came away from each of my conversations on this subject with Mr. Sonnenreich, in particular with a clear impression—and I am sure this can be said by the Senator from North Carolina as well—that Mr. Sonnenreich is very sensitive to the constitutional question involved here. I think his attitude is that this no-knock provision is designed as an effective tool to be used—carefully used, and discriminately used—by Federal officers who are called upon to enforce the provisions of this act, because of the most peculiar set of circumstances involved in this particularly difficult field.

The peculiar circumstances are that in this category or class of crimes, the professional peddler or the professional refiner of heroin, for example, can very easily dispose of evidence by throwing it in a sink or washing it down a drain, or putting it in a toilet, before law enforcement officers, using all dispatch, can get in with a proper search warrant. This poses a great problem to our narcotic officers and that is the reason for the proposal. This is why I said a few minutes earlier to the Senator from North Carolina that it is a question the Senate has got to decide. But I wanted to say that these great lawyers—and I know this is true—are very much concerned about the matter and are not just rushing in and brushing away constitutional protections. They do not intend to do any such thing; but they have struggled with the problem, and their article is an attempt to shed some light on the subject.

Mr. President, the article "No-Knock and Non-Sense," as I have said, was written by Michael R. Sonnenreich and Stanley Ebner, both responsible officers with the Justice Department, and it deals directly with section 702(b), known as the no-knock provision of the Controlled Dangerous Substances Act of 1969.

Because the article examines in exhaustive detail the constitutional implications of this provision which is an important part of the proposed regulation, it would not for this reason be suitable for presentation on the Senate floor.

I have consequently abridged and digested the paper's views to provide Senators with a ready understanding of both its contents and the intent of the proposed legislation. I will ask that the entire article be printed at the end of my remarks for those who wish to read it in its entirety; however, I feel that the following is an accurate presentation of the paper's highlights:

It is essential that we are realistic in our approach to this provision; it should not be considered part of a television script that conjures up visions of kicked-in doors, sinister police invading residences in the dark of night and other apparitions characteristic of a police state. Rather, the no-knock provision is designed as an effective tool to be used discriminately by Federal officers who are called upon to enforce the many provisions of this act.

One is tempted to consider this provision of doubtful constitutional validity, in view of the fourth amendment's prohibition against unreasonable search and seizures and the implied right of privacy.

The right of privacy is the right of an individual to be left alone, to be shielded from unwarranted governmental intrusions. But the framers of our Constitution recognized that there are times when an individual can be deprived of this substantive right. The execution of a valid search warrant at times severely contracts an individual's right to privacy; it may even disappear altogether. To protect the individual in this event the framers of our Constitution require that any search and seizure must be reasonable to be valid. What we are really talking about when referring to section 702(b), is whether an unannounced entry, pursuant to judicial authorization, is reasonable. The authors submit that it is and that therefore there can be no question as to the constitutional validity of this subsection.

Critics of this provision may assert that for a search to be reasonable and thus within constitutional bounds, notice of authority and purpose must be given prior to the actual execution of a warrant. This is a general rule, but it is not without exception. Some 29 States allow for unannounced entry either by statute or judicial exception to the common law rule in cases where notice of authority and purpose could lead to the destruction of the evidence sought. Other States allow for unannounced entries in cases where there are "exigent" circumstances. The no-knock provision we are considering in this bill reasserts the general principle that reasonableness of a search demands notice of authority and purpose. However, it goes further and codifies some of the exceptions to this general rule. As mentioned earlier, the only cases where a no-knock warrant may be judicially authorized is when notice of authority and purpose would either lead to the destruction of the evidence sought or place the officers executing the warrant in danger of bodily harm. In effect, this provision is a congressional declaration that under those narrowly defined circumstances, notice of authority and purpose can be dispensed with and the search still remain within the bounds of reasonableness.

Judging from past experiences in narcotic and dangerous drug law enforcement, Congress could rationally justify these two exceptions as necessary for effective law enforcement. What we are saying is that under circumstances where prior notice would lead to destruction of evidence or would endanger the lives of officers executing the warrant, an unannounced or forceable entry will not invalidate the search as unreasonable. We are asked to make these two exceptions to the general rule because past experience has demonstrated that evidence has often been destroyed or officers injured because they were required to give notice of authority and purpose prior to making an entry.

The no-knock provision does not compel us to impose a loose standard which would cause indiscriminate abuse by law enforcement officers. We will establish a general finding that notice of authority and purpose can lead to destruction of evidence or injury to officers. An additional provision requires that a neutral judge or magistrate must make a specific finding of either of these two possible events in each individual case. Before notice of authority and purpose can be dispensed with, the judge or magistrate issuing the warrant must be satisfied that there is probable cause to believe that such grounds exist. He must specifically find probable cause to believe that either destruction of the evidence or injury to the agents will result if notice of authority and purpose is given.

Probable cause requires more than mere generalities; it requires specific facts. A no-knock warrant under the proposed provision could not be issued solely because most drug traffickers keep their supply of drugs in a place where they can be easily disposed of. More specificity will be required by the definition of probable cause. Information regarding the actual location of the drugs, the type and quantity, or the propensity of the suspect to be violent will have to be known by the agents and shown to the judge when they apply for a warrant.

The question really settles down to a moral, rather than legal judgment as to whether or not "no-knock" should be permitted. Weighing the values of privacy, potential for violence and the need to preserve evidence in drug cases, it is evident that no-knock authority is not only necessary but essential within the framework of this Federal drug proposal. It will set out the statutory requirements instead of placing reliance on common law doctrines. Thus, law enforcement has a source on which to rely in this area. The authors emphasize that the statute requires the interposition of a judge or magistrate before no-knock authority can be obtained in executing a warrant.

This judicial supervision has been re-

peatedly favored by the Supreme Court and should be required in this situation.

The authors conclude that the time has come to stop theorizing about cases that happen daily in local law enforcement. What is needed now is meaningful reaction, not unwarranted speculation. Only then is the fourth amendment upheld and the population protected.

Mr. President, at this point, I ask unanimous consent to insert the full article in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NO-KNOCK AND NON-SENSE, AN ALLEGED CONSTITUTIONAL PROBLEM

(By Michael R. Sonnenreich* and Stanley Ebner**)

(NOTE.—This article has been submitted for publication to a Law Review and is in response to the Minority Report of Senator Ervin and Senator Hart on S. 3246 (The Controlled Dangerous Substances Act).)

INTRODUCTION

On July 16, 1969, the Nixon Administration sent to the Congress a major revision of the existing Federal narcotic and dangerous drug laws entitled the "Controlled Dangerous Substances Act." Hearings have been held in the Senate and much verbiage has passed under the bridge. Along with discussions concerning penalties, industry regulation and research, one item has attracted a great deal of attention, far more than anyone involved with the proposal thought. From the first, "no-knock" was the lead for newspaper articles concerning the bill. It became immediately apparent that there is a great deal of misinformation about this "no-knock" authority and its impact on the average citizen. Visions of kicked in doors, sinister police invading residences in the dark of night and other visions of the "police state" sprang to mind. In addition to this popular concept, the only formal disagreement to come out of the Senate Judiciary Committee, which reported favorably on the Controlled Dangerous Substances Act and recommended passage, concerned no-knock and questioned its constitutionality.

To place the issue in proper perspective, this article has been written. The intent is to first trace the historical origins of "no-knock" generally under common law and then to analyze state statutes dealing with it. Also analyzed is the Federal posture, statutory and case law, as to this method of entry. Lastly, the article focuses back on the Controlled Dangerous Substances Act and its "no-knock" provision, section 702(b). It is the opinion of the authors that the section is in fact a realistic compromise between those who favor the common law exception in its totality and those who insist that such authority is an unconstitutional invasion of privacy.

I. HISTORICAL DEVELOPMENT OF "THE KNOCK"

A. *Common Law:* A man's home, mortgaged though it may be, has long been considered under Anglo-American tradition to be his castle. This being the case, unreasonable invasions of the domicile are specifically prohibited by our Constitution.[1] However, long before the framers of this document set quill to ink, the courts of England had found it necessary to deal on a regular basis with the issue of the King's right of entry into private dwellings. The resulting difficulties can be illustrated by the fact that the ancient maxim which proclaims that "Every man's house is his castle" is matched in age by the maxim that, "The King's keys unlock all doors."[2] Actually, these maxims relate to different processes; the former applying to civil actions, and the latter to those of a criminal nature.

A fifteenth century statement of the rule indicates that for a felony, or suspicion of same, one may break into the dwelling house to take the felon, for it is for the common weal and to the interest of the King to take him; but it is otherwise as to debt or trespass and the sheriff or any other may not break into one's dwelling to take him for it is only for the private interest of the party.[3]

The most familiar statement of the common law rule is contained in *Semayne's Case:*[4]

"In all cases where the King is a party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the King's process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming and to make request to open the doors."

Thus it was that "the knock," or announcement of purpose, was enunciated as a specific obligation in connection with authorized entry into private dwellings, even though the opinion actually concerned a writ issued in a civil case. The use of the word "ought" in the last sentence of the dictum should be noted here for future reference, as it relates to a central issue within the framework of this paper.

During this period in English history, authorities differed among themselves as to the circumstances under which a breaking of doors could occur. Coke, for example, expressed the view in his *Fourth Institutes* that a warrant to break open a house in a search for a felon, issued upon suspicion, was against the Magna Carta and decisions of the courts, and that, in any event, a writ was a necessary requirement for the breaking of a house.[5] Hale, however, evidently felt that a constable had the power, without a warrant, to break open a door to arrest when a felony had actually been committed. He also indicated that where a suspected felon took flight and entered a house, a constable could break in without a warrant if "the door will not be opened upon demand of the constable and notification of his business."[6]

While the debate continued at the intellectual level, and rules changed from time to time,[7] it is apparent that houses were in fact being entered on a sufficiently indiscriminate basis to contribute to a general feeling of uncertainty and discontent with the procedures. And again, it was the later employment of the so-called "writs of assistance" during colonial days, warrants which will be discussed later in greater detail, which pointed to a parting of the ways between the colonies and Mother England. The common thread of resistance which runs throughout this pre-Constitutional period respecting any Government or Royal right to break and enter private dwellings does not, however, focus upon the necessity for the giving of prior warning or announcement of purpose. Rather, the concentration is upon the *justification* for the breaking or, in other words, the "reasonableness" of the forced entry.

The relevant difficult questions which concerned judges and legal scholars shared three to four hundred years ago were queries such as: was there a warrant? was there hot pursuit? was the commission of a felony observed? was there an immediate threat of violence or danger to the law enforcement official? and was there a previous notice of authority and purpose?[8]

Within the context of the above circumstances, the phraseology used in *Semayne's Case, supra,* becomes more significant as an expression of seventeenth century legal philosophy in England. The sheriff "ought" to signify why he is about to execute the King's process before he breaks and enters to do so. But the broadest examination of English law and precedent discloses no evidence that such a suggestion was ever, in fact, a requirement which would render the subsequent entry legal and avoid future repercussions against the sheriff or other party. For too long has this case been read out of context and beyond its intentions. To ignore the precatory wording used is to add insult to injury.

B. *Statutes:* In America, the common-law rule of *Semayne's Case* was generally followed in early decisions. The Massachusetts Supreme Court made a point of emphasizing a citizen's right to be free from forcible entry into his home for civil arrest purposes,[9] although there is some questions as to whether this pronouncement was necessary to the decision. It was recognized, however, that force could be used when the entry was made to seize specific goods as under writs of attachment.[10] It was also recognized as early as 1822 that, if notice was in fact a general requirement, there were cases where it did not apply. One of these was clearly enunciated by a Connecticut court in *Read* v. *Case,*[11] which held that imminent danger to life eliminated the need to provide notice. Furthermore, a later Kentucky case indicated that no notice was required in criminal cases, since the "offender" would then be presented with an opportunity to avoid the process of the law.[12] The continuing uncertainty regarding the notice or announcement aspect in criminal cases is illustrated by an examination of *Commonwealth* v. *Reynolds,*[13] which attempted to summarize the law by stating that an officer could *always* break and enter after announcement of purpose and refusal, but that not all cases had imposed an initial requirement of notice on officers.

Since the turn of the century, States have begun to enact statutes specifically dealing with the authority of an officer to break and enter in order to make an arrest. The table at Appendix A contains a listing by State of the various statutes regarding authority for forced entry to execute search or arrest warrants. Although initially the vast majority of these statutes expressly required notice in some form prior to forcible entry,[14] a more recent trend has been toward the elimination of the notice requirement under specified conditions.

California

California has developed a fairly stringent approach to noncompliance with the "knock and notice" provisions of its penal code. The California statute is almost identical to 18 U.S.C. 3109,[15] and its court decisions have developed a basis for the statute to a far greater degree than have the Federal courts. In addition, California's large number of decisions in this area have palced it in a position of leadership for a great many other States which have identical or very similar statutes.[16]

Section 844 of the California Penal Code provides, "to make an arrest, a private person, if the offense be a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired."

On its face, the statute was merely a codification of common law and as such the very fact that the common law exceptions were omitted would seem to have precluded any form of "no knock" arrest or search. However, in 1956, compliance with the statute was interpreted by the California high court in *People* v. *Maddox,*[17] and *People* v. *Martin,*[18] to be excused under the common law exceptions to the rule of announcement.[19] Thus, announcement before arrest was excused if the facts known to the officer before his entry were sufficient to support his good faith

Footnotes at end of article.

belief that compliance would (1) have increased his peril or (2) frustrated the arrest. In that case and in a series of similar cases which followed *Maddox*, destruction of evidence was added as another ground for noncompliance with section 844 or its warrant counterpart section 1531.[20] The destruction exception, however, was generally limited to narcotics and bookmaking paraphernalia based on the assumption that, by the very nature of these items, they were easily disposable. But the courts went one step further in narcotic cases, which comprised the bulk of the cases in this area, by not requiring any showing whatever of particular exigency as would generally be required to excuse compliance with the knock or notice provisions of its statutes. For a while after *Maddox*, the California courts failed to grant suppression motions on unlawful entry pleas.[21] Finally, in 1967, in an abrupt reversal of this trend, the California Supreme Court in *People* v. *Gastelo*[22] held, ". . . we have excused compliance with the statute in accordance with established common law exceptions to the notice and demand requirements on the basis of the specific facts involved. No such basis exists for nullifying the statute in all narcotics cases, and, by logical extension, in all other cases involving easily disposable evidence." [23] By so doing, the court clearly foreclosed noncompliance with the statutory requirements of knock and notice when such noncompliance was based solely on the police officer's "general experience relative to the disposability and the kind of evidence sought and the propensity of offenders to effect disposal." [24]

"Just as the police must have sufficiently particular reason to enter at all, so must they have some particular reason to enter in the manner chosen." [25] The court further stated that the particular reason for the mode of entry had to be based on the specific facts of the case such as would lead a police officer to reasonably conclude that the occupants of the place to be searched had resolved to affect disposal in the event of police intrusion.[26]

A month and a half later, in *Meyer* v. *United States*,[27] the United States Court of Appeals for the Ninth Circuit, citing the *Gastelo* case as ruling, suppressed evidence seized in a raid on a "bookie" operation where officers, ". . . had no reason for omitting a prior announcement of their identity and purpose except general knowledge that destruction of evidence (betting slips) was likely in this type of offense. . ."

The court, quoting from *Gastelo*, further stated that: "Under the Fourth Amendment, a specific showing must always be made to justify any kind of police action attempting to disturb the security of people in their homes. Unannounced forcible entry is, in itself, a serious disturbance of that security and cannot be justified on a blanket basis. Otherwise a constitutional test of reasonableness would turn only on practical expediency and the amendment's primary safeguard—the requirement of particularity—would be lost."

It at once became apparent that the *Gastelo* case on the State level and the *Meyer* case on the Federal level were redefining the constitutional and practical limits of the knock and announce rule in a fairly strict manner. But the California court retreated slightly from its strict position in *Gastelo* using the Brennan dissent in *Ker* by allowing noncompliance when officers, just prior to entry, were able to detect activity from within the residence which might lead them to reasonably conclude that the occupants within were then engaged in the destruction of the evidence sought.[28]

In *People* v. *Rosales*,[29] and again in *Greven* v. *Supreme Court of the County of Santa Clara*,[30] the court attempted to clearly delineate the parameters of excusable noncompliance with the knock and notice requirements of section 844 and section 1531. In *Rosales*, it defined the constitutional basis of the announcement requirement. The court quoting from Justice Brennan's dissent in *Ker* v. *California*[31] stated "that [this] requirement is the essence which safeguard[s] individual liberty" but the court went on to state that such rules reflect not only a concern for the rights of persons suspected of crimes but also for the security of innocent persons who may be on the premises. The court also quoted from *Miller* but did not apply the *virtually certain test*, applying instead the reasonable good faith belief test as to the exceptions to the announcement requirement so long as such belief was accompanied by more than general knowledge as to the comparative case in disposing of narcotics. In *Greven*, the court stated that the reasons for the announcement rule were twofold. Again, quoting from *Miller*, it first noted that "the reverence of laws for the individuals right of privacy in his house [are paramount)," and second quoting from *Sabbath* v. *United States*,[32] it expounded upon the public policy argument of discouraging, whenever possible, creation of situations conducive to violence.[33] It went on to state that substantial compliance with the knock and notice rule required at least an identifying announcement by officers even if the exigencies of the situation would have prevented a statement of purpose. This, the court stated, was as far as the case would stretch the term "substantial compliance" for excusing the police from the mandates of section 844 and section 513 of the penal code.

Thus the California court placed the Fourth Amendment in a fairly prominent position, restricting to a great degree the latitude of discretion previously accorded to law enforcement authorities. But the restrictions have been fairly realistic, leaving the court, rather than a formalistic rule, the arbiter of new situations arising out of searches and arrests. This approach is far more flexible than the District of Columbia's approach which rejects most judicial exceptions to its knock and notice statute.[34]

Florida

Florida has a statute similar to California but has taken a much stricter approach to the interpretation of its statute.[35] In *Benefield* v. *State*,[36] whose facts closely parallel *Miller* v. *United States*, the Supreme Court of Florida noted that its statute was merely a codification of the common law (as was mentioned in *Maddox* and *Ker*). It noted that the *Ker* case cited by the State as justification for noncompliance with the statute was inapplicable because Florida did not recognize certain exceptions to the knock and announce rule which had been engrafted by the California courts onto its statute and upon which *Ker* was based. The court then went on to list the four exceptions to its our knock and wait rule as:

1. "where the person within already knows the officer's authority and purpose;

2. where the officers are justified in the belief that the persons within are in imminent peril of bodily harm;

3. if the officer's peril would be increased had he demanded entrance and stated the purpose; or,

4. where those within made aware of the presence outside are then engaged in activities which justify the officers in the belief that an escape or destruction of evidence is being attempted." [37]

In *Koptyra* v. *State*,[38] the Florida court was again faced with a no-notice, forcible entry situation involving marihuana. An undercover agent, after attending a pot party for a short time, left and returned shortly thereafter with additional officers and arrested those present at the party. This agent, who was admitted to the house upon knocking, merely let his colleagues follow him through the door and proceeded to arrest the occupants and search all the area immediately adjacent thereto.[39] The court affirmed the conviction referring to the *Benefield* case but side-stepped the constitutional issue by distinguishing *Koptyra* from *Benefield* on the basis that the case at hand did not involve a breaking and as such the statute did not apply. Thus it would seem that the present state of the exceptions in Florida are those stated in *Benefield* and represent a stricter interpretation of the common law exceptions to knock and notice than California.

Utah

Florida was not the only State to use the California decisions as a basis for interpreting its own statute. Utah, Idaho, Iowa and South Dakota [40] as well as many other States which have identical or substantially identical knock and notice statutes to section 844 and section 1531 of the California Penal Code have used these decisions. Utah, in 1967, amended its search warrant provision to read:

"Officer may break door or window to execute warrant—Authority. The officer may break open any outer or inner door or window of a house, or any part of a house or anything therein, to execute the warrant:

(1) If, after notice of his authority and purpose, he is refused admittance; or

(2) Without notice of his authority and purpose, if the judge, justice or magistrate issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice. The judge, justice or magistrate may so direct only upon proof under oath, to his satisfaction that the property sought is a narcotic, illegal drug, or other similar substance which may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or any other may result, if such notice were to be given."

It thus codified the State of California decisions just prior to *Gastelo*,[41] *Rosales*,[42] and *Greven* [43] and, although no decisions have been forthcoming from the Utah high court interpreting the statute, the statute has in essence (at least on its face) disregarded the Fourth Amendment rights argument in favor of an expanded common law approach requiring a mere affirmation by the arresting officer that the object sought was of an easily disposable nature without any requirement as to the exigencies of the situation. Yet the Utah court has been at least somewhat cognizant of the constitutional ramifications of the "no knock" provision. In *State* v. *Louden*,[44] the court addressing itself to a slightly different situation noted that, while the constitutional safeguards espoused in *Ker* were not to be ignored, nevertheless they were to be weighed against the "practical exigencies of police work." This case seems to have been the extent of Utah's consideration of "no knock" and represents at best a general side-stepping of the constitutional issue—at least for the time being.

Washington

Washington, which also has a statute similar to California's section 844, has interpreted noncompliance with the knock and announce rule in a slightly different manner than California. Addressing itself to the constitutional issue in *State* v. *Young*,[45] the Supreme Court of Washington, citing the *Ker* and *Miller* decisions, held that, "when officers come armed with a search warrant, forcible entry without announcement of identity or purpose may be justified when exigent and necessitous circumstances exist. . . ." Noting Justice Brennan's dissent in *Ker*, the court found that such circumstances may be deemed to exist when, "narcotics or other property subject to immediate destruction" are involved.[46] This would place the Washington court in a position roughly analogous to the post-*Maddox* attitude of the California courts.[47]

Footnotes at end of article.

New York, Nebraska, South Carolina and North Dakota

A group of States have taken a slightly different approach to the "no knock" exceptions to the rule requiring notice of identity and purpose by the arresting officer. Nebraska, New York, North Dakota and South Carolina [48] have included the requirement of judicial approval for a "no knock" direction to any arrest or search warrant with such wording as:

"The officer may break open an outer or inner door or window of a building, or any part of the building, or anything therein, to execute the warrant, (a) if, after notice of his authority and purpose, he be refused admittance, or (b) without notice of his authority and purpose, if the judge, justice or magistrate issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice. The judge, justice or magistrate may so direct only upon proof under oath, to his satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given. As amended L. 1964, c. 85, eff. July 1, 1964." [49]

There is presently a controversy as to whether the addition of this clause will satisfy the constitutional *reasonableness* requirement set out in *Ker*.[50] One point of view can be found in *People* v. *DeLago*.[51] In that case, the Court of Appeals of New York allowed police officers to make an unannounced entry at the apartment of the defendant with a search warrant under the above-mentioned provision where "it was reported to the court by affidavit that gambling materials were likely to be found at this location and in issuing the warrant, the court could take the judicial notice that contraband of that nature is easily secreted or destroyed if persons unlawfully in possession thereof are notified in advance that the premises are about to be searched." [52] Citing and discussing *Ker* and *Maddox*, the court held that the police tactics were inoffensive to constitutional standards and that section 799 of the Code of Criminal Procedure authorizing the inclusion of the "no knock" provision in the search warrant after judicial approval was also in compliance with the mandates of the Fourth Amendment. The court made this finding notwithstanding the fact that ". . . there [was] nothing in the affidavit to show how or where these gambling materials would likely be destroyed or removed, [because] the likelihood they would be was an inference of fact which the judge signing the warrant might draw.[53]

Thus, this case indicates that the New York Courts recognize that there is a question of constitutional dimension but that exigent circumstances, which do not have to be supported by specific facts, remove the forcible entry from constitutional protection." It is also worth noting that the New York Courts have held that an unannounced entry could be made without a warrant if there was probable cause to arrest and exigent circumstances to justify noncompliance with the statute.[54]

District of Columbia

Basically, three statutes cover search warrant entries in the District of Columbia and all three have very similar language;[55] two are local statutes applying only to the District [56] and one, a Federal statute,[57] is of general application. The Federal statute has been held to apply to the District of Columbia for many years and the case law for any of the three has been considered almost interchangeable.[58] Both the Federal and local statutes bear a marked resemblance to the California statute (Section 844), yet, they have been interpreted in an entirely different manner by the Supreme Court and lower Federal courts in the District. Whereas the California court has engrafted a series of exceptions onto its statute, decisions in the District of Columbia relating to 18 U.S.C. 3109 have continued to interpret any possible exceptions to the "knock and wait" rule in a highly restrictive manner.

One of the major cases in the District of Columbia was *Accarino* v. *United States*,[59] which involved a warrantless arrest and search and a subsequent conviction for violation of gambling rules. The Court discussed at length the common law background allowing the police the right to enter a home or apartment by breaking in without stating their purpose [60] basing their decision on "a man's right of privacy in his home." The *Accarino* court rejected the Government's repeated attempts to excuse its failure to obtain a warrant for the forcible arrest and search. But this case became the basis upon which District of Columbia courts also based their interpretation of the District of Columbia and Federal warrant statutes. In 1958, the landmark case, *United States* v. *Miller*,[61] was promulgated by the Supreme Court. It would serve no purpose at this point to discuss *Miller* extensively since the case will be treated in considerable depth in a subsequent section.[62] Suffice it to say that Justice Brennan, who delivered the opinion for the Supreme Court in *Miller*, side-stepped the issue of whether 18 U.S.C. 3109 as a codification of common law implicitly included exceptions included in such States as Connecticut and California with the statement, ". . . whether the unqualified requirements of the rule admit an exception justifying noncompliance and exigent circumstances is not a question we are called upon to decide in this case." However, other lower court District of Columbia cases interpreted possible exceptions to 18 U.S.C. 3109 in a fairly strict manner and required almost total compliance with the statute's mandates. For example, in *Masiello* v. *United States*,[63] there was a conflict in the testimony as to whether or not the police, had after announcing only their presence and immediately entering the premises, notified the defendant that they had a search warrant. The court remanded the case back to the lower court to determine if the police had *in fact* totally complied with the statute's knock and notification requirements. Again in *Keiningham* v. *United States*,[63] and *Hair* v. *United States*,[64] the court stated that the *Miller* rule requires police officers "who seek to invade the privacy of an individual's home to announce their authority and their purpose in demanding entrance before 'barging in' . . . ." [65] It is worth noting that in *Hair* the court, espousing this rule, excluded gambling paraphernalia which other State courts have held to be "easily disposable" contraband as would permit noncompliance with their knock and notice statutes. This case was merely the re-affirmation of a similar holding in an earlier case [66] and indicates the court's reluctance to permit any expansion of "no knock" in the District of Columbia.

II. ANNOUNCEMENT AND THE CONSTITUTION

The Fourth Amendment to the United States Constitution denounces only such searches and seizures as are "unreasonable." This is a word which, quite naturally, has confounded legal scholars for hundreds of years.[67] Yet the Fourth Amendment was only approved after the inclusion of Gerry's language banning "unreasonable seizures and searches" when the committee of the whole was considering Madison's proposals in the opening session of the new national Congress.[68] No doubt individual reaction against the so-called "general warrants" or "writs of assistance" was primarily responsible for the inclusion of this language. However, as our previous discussion indicates, neither this attitude nor the standard were novel. The common law was fairly well settled as against unreasonable searches in general, although no rules of reason had been clearly defined. Use of the term "unreasonable" was, of course, the most practical and, at the same time, the most farsighted way of satisfying current feeling in 1789 and of providing flexibility for the future. Still the term must have had some definite connotations to Gerry, Madison, and their contemporaries during the consideration and approval of the Bill of Rights. The growth of the law in this area would tend to obscure this idea, although modern courts often pay lip service, and sometimes more, to common law trends and traditions.[69] It might be well to bear in mind the words of Chief Justice Taft on this subject; [70]

"The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens."

The language of the Fourth Amendment suggests that the search and seizure itself was of primary concern to the drafters. The protections of the Amendment extends to "persons, houses, papers, and effects," each of which can involve different factual circumstances. Whether an announcement of purpose requirement is implicit for any or all of these protected entities is beyond our present concern, for the Supreme Court in recent years evidently concluded that a statement of identity and purpose is a basic prerequisite to entry into a home without the occupant's acquiescence—a prerequisite that has Constitutional dimensions.[71] The road to this conclusion is winding at best, however, and is paved with inconsistencies as well as exceptions. Furthermore, the end of the road is not necessarily in sight.

In deciding the case of *Miller* v. *United States*,[72] Mr. Justice Brennan and his colleagues were in effect facing the rule of announcement for the first time. In reaching a decision, the Supreme Court quite naturally turned to *Accarino* v. *United States* [73] which was considered something of a landmark at the time due to its extensive discussion of the common law rule on forcible entry. *Accarino*, like *Miller*, involved a case arising in the District of Columbia. But there are several factors which make Mr. Justice Brennan's deferrence to "the rule of *Accarino*" somewhat unfortunate. To begin with, *Accarino* owes its result to a great extent to the lack of a warrant for arrest.

In rendering his decision, Judge Prettyman concluded: [74]

"Unless the necessities of the moment require that the officer break down a door, he cannot do so without a warrant; and if in reasonable contemplation there is opportunity to get a warrant, or the arrest could as well be made by some other method, the outer door to a dwelling cannot be broken to make an arrest without a warrant."

It was primarily on this basis that Judge Prettyman determined that the evidence, seized following the forced entry and subsequent arrest of the defendant by law enforcement officers, should have been excluded. Unfortunately, he chose to add the following comment: [75]

"Upon one topic there appears to be no dispute in the authorities. Before an officer can break open a door to a home, he must make known the cause of his demand for entry."

If indeed there had been no dispute prior to *Accarino*, it was because the issue had never been squarely faced in a modern criminal case. Otherwise, as mentioned earlier, the common law was by no means fixed on this point, except in the general agreement that there were reasonable exceptions to any announcement rule which might exist.

Miller, like *Accarino*, was decided on non-Constitutional grounds. Language to the

Footnotes at end of article.

contrary notwithstanding, a close reading reveals that *Miller* stands as a determination of District of Columbia law, with the Fourth Amendment only indirectly involved. Likewise, the officers who arrested Miller after their forced entry had no warrant. Both cases speak in terms of a common law right of privacy in the home.[76] Both cases cite *Semayne's Case* [77] as well, but where *Accarino* recognizes that this venerable decision concerned a writ issued in a civil case,[78] Miller recites the oft-quoted pronouncement as if it related to breaking in order to arrest for a felony.[79] Such a misconception with regard to *Semayne's Case*, and to the entire body of Anglo-American law on this subject, is regrettably not uncommon. More serious is the fact that Mr. Justice Brennan failed to reach any conclusions with respect to common law exceptions such as the immediate threat of violence. And the underlying rationale that to use a knock of notice was, in most cases, the better way to avoid violence which might breach the King's peace, was completely ignored in deciding the case. The concept of privacy, as relied upon by *Miller* and idealized by William Pitt,[80] is a somewhat later and more amorphous development. Prior to our Constitution, that "the King's keys unlock all doors" [81] was probably a lot closer to the truth.

Although *Miller* may be based upon "the rule of *Accarino*" or District of Columbia law, its implications are broader because of the majority's insistence on relating its holding to Section 3109 of Title 18, U.S.C.[82] In Mr. Justice Brennan's view, 18 U.S.C. 3109 is the result of Congress' desire to codify the traditional rules of forced entry.[83] It is, to him, a restatement of *Semayne's Case*, and therefore applies in effect to all forcible entries, although by its language Section 3109 is limited to the execution of search warrants. The ambiguity thus developed is evident when reading cases which follow *Miller*.[84]

Again Mr. Justice Brennan articulated for the majority in *Wong Sun* v. *United States*,[85] the Supreme Court's next major opportunity to consider its holding in *Miller*. Once more agents had forcibly entered a dwelling without a prior notice of authority and purpose, although one of the agents apparently identified himself as a Federal narcotics agent to "Blackie" Toy before forcing the door to arrest him.[86] In reiterating his discussion of exceptions to the announcement rule in exigent or extraordinary circumstances,[87] Mr. Justice Brennan once more refused to pass upon this area, although he did repeat the "virtual certainty" test he formulated in *Miller*. But as in *Miller*, he could find in *Wong Sun* no facts justifying the conclusion that the officers could be virtually certain that "Blackie" Toy already knew their purpose. The door to other exceptions recognized at common law was opened somewhat wider in *Wong Sun*, however, when Mr. Justice Brennan again specifically mentioned the exceptions of "the imminent destruction of vital evidence, or the need to rescue a victim in peril" in recounting the fact that the Government claimed no such circumstances in the case.

Up to this point, "the knock" itself had not yet assumed Constitutional proportions. Holdings were based on common law, State law, 18 U.S.C. 3109, and various combinations of these authorities. The stage was not particularly well set, therefore, for *Ker* v. *California*.[88] Mr. Justice Clark, who had written dissents in both *Miller* and *Wong Sun*, on this occasion wrote for the majority. Mr. Justice Brennan, on the other hand, authored the dissent which expressed the views of the Chief Justice and two other Justices as well.[89] Although the decision was close in this case, with the exception of Mr. Justice Harlan there was virtual unanimity on one point: the rule of announcement is a Constitutional requirement implicit in the Fourth Amendment proscription against unreasonable searches and seizures. But where the minority felt that the circumstances in *Ker* did not satisfy any exceptions to the "knock" requirement which they were willing to recognize, the majority was of the view that ". . . in the particular circumstances of this case the officers' method of entry, sanctioned by the law of California, was not unreasonable under the standards of the Fourth Amendment as applied to the States through the Fourteenth Amendment." [90]

George and Diane Ker were undoubtedly taken by surprise when law enforcement officers quietly entered their apartment through the use of a pass key on the night of July 27, 1960. George was reading a newspaper in the living room, Dianne was just emerging from the kitchen. Resting in plain view in that kitchen was a brick of marihuana weighing over two pounds. More marihuana was subsequently discovered in the kitchen and in the bedroom after the Kers were arrested. There was no warrant obtained, nor was there any announcement of identity and purpose, prior to the officers' surreptitious entry. The omission of notice was ostensibly to prevent the destruction of evidence,[91] and was sanctioned by a judicial exception to the California statute which ordinarily required announcement.[92]

Although no force was used to make the entry in *Ker*, the majority recognized that the use of a pass key in this case was the legal equivalent of a breaking. They continued to leave open, however, the question of entry by ruse or trickery,[93] fostering future uncertainty in this area. Moreover, the Court chose to overlook the opportunity to establish a greater degree of certainty in several respects. In relying upon "the particular circumstances of this case," [94] Mr. Justice Clark evidently recognized a "destruction of evidence" exception but refused to discuss other "exigent circumstances"—although Mr. Justice Brennan listed his three somewhat restrictive exceptions in the dissent.[95] The majority opinion did not clarify whether the same result would obtain in this case if Federal rather than State officers had been involved, or if a search or arrest warrant had been issued. But one thing must be said for *Ker:* although the rules for its application were left uncertain, with Mr. Justice Clark and Mr. Justice Brennan polarized at almost opposite extremes, an exception to the announcement rule was incorporated into the Fourth Amendment for situations where there was a reasonable possibility that evidence might otherwise be destroyed.

One jurisdiction felt that the rules for the destruction exception set forth in *Ker* should be clarified to a much greater degree. The Court of Appeals of the Ninth Circuit in *Meyer* v. *United States*,[96] was faced with a situation in which the police had, by their own admission, failed to comply with the State statute based solely upon their general knowledge as to the possibility of paraphernalia used in bookmaking operations. The Government conceded that if it violated the knock and announce provisions of the statute, then the arrest and subsequent search was invalid and the evidence obtained was inadmissible. It argued, however, that because of the general nature of bookmaking paraphernalia, the *Ker* destruction exception excused noncompliance with the statute. The court in a *per curiam* decision flatly rejected this position. Citing a major California case [97] as controlling, the court stated that neither it nor the Supreme Court had ever held that a blanket rule authorizing "no knock" forcible entries was constitutionally reasonable based merely on the disposability of the evidence sought. The court noted that the Supreme Court in *Ker* had split four to four on the question of whether the evidence offered to excuse compliance with the notice and demand requirements was in fact constitutionally sufficient. The Court of Appeals stated that it had excused compliance with the statute in accordance with the established common law exceptions *only* on the basis of the *specific facts* of the case. That otherwise, the constitutional test of reasonableness would turn solely on the practical expediency and the Fourth Amendment's primary safeguard—the requirement of particularity—would be lost.[98] It thus attempted to clarify excusable noncompliance based on the destruction exception to greater degree than was set forth in *Ker*. Clearly, the case stood for the proposition that "no-knock" is permissible in the destruction of evidence situation. But it would require a more stringent form of judicial review based on the particularity of the facts in the case at hand.

The Constitutional holding in *Ker* has not been overruled, and the Supreme Court has refused thus far to reconsider its position.[99] In reliance upon *Ker*, some states have begun codifying the destruction of evidence exception and permitting the issuance of "no-knock" warrants. State courts appear to be supporting such legislation.[100] The more recent Supreme Court decision in *Sabbath* v. *United States* [101] indicates that these courts are on relatively safe ground. Although the decision in *Sabbath* turned upon an application of 18 U.S.C. 3109 rather than the Fourth Amendment, Mr. Justice Marshall's opinion helped to purify a few of *Ker's* muddy waters. It verified that all entries into dwellings by Federal officers will be tested in terms of Section 3109, with regard to which *any* unannounced entry will constitute a "breaking" regardless of actual force employed. This should be no surprise in view of *Ker*. Entry by ruse was once again set apart, however, which act in itself provides some clarification.[102] Most importantly, the Court reinforced the concept of implicit exceptions to the constitutional rule of announcement. It did so in a somewhat curious way, however, by utilizing a footnote [103] which speaks in terms of "any possible constitutional rule." And in referring to the "recognized" exceptions, the note cites Mr. Justice Brennan's dissent in *Ker* without reference to the majority opinion in that case. One can only conclude that this reference was due to Mr. Justice Brennan's neat exposition of what he viewed the exceptions to be, something Mr. Justice Clark failed to do. In other words, the citation should not be taken to favor the minority view of the destruction of evidence exception over the majority view, thereby impliedly circumscribing (if not overruling) the holding in *Ker*. However, one cannot help but wish once again for greater certainty.

Where, then, are we at this point? For one thing, we seem to have a federal statute [104] which is redundant of both the common law and the Constitution. Stated another way, it appears that entries by State officers will be judged by State law, reviewed by Fourth Amendment standards in appropriate cases; while entries by federal officers will be scrutinized in terms of Section 3109, which codifies the common law. Both Section 3109 and the Fourth Amendment contemplate exceptions in exigent circumstances, but whether Section 3109 is more stringent in its application of them cannot yet be determined. Certainly, there is a constitutionally recognized exception to the announcement rule, and a properly drafted amendment to Section 3109 reflecting the exception for potential destruction of evidence should pass Constitutional muster. Other exceptions might survive judicial scrutiny as well.[105] One thing is certain: the constant growth in drug traffic is resulting in increased pressure from law enforcement which will, in turn, encourage a corresponding growth in the law—or, if not growth, at the very least a clarification or refinement of existing standards.

Footnotes at end of article.

Proponents of a strict announcement requirement have created a constitutional certainty from a common law uncertainty. A structure resting upon such dubious foundation cannot long avoid some shifting. Doubtless, our founding fathers would have themselves disagreed if asked specifically in 1789 whether they considered unannounced entries into dwellings "unreasonable," and the exclusionary rule itself was not clearly formulated for almost one hundred years thereafter.[106] Nor could they have foreseen the growth in organized crime and the public impact resulting from present day gambling and drug traffic. To elevate the announcement rule to a constitutional requirement in 1963 was probably historically unsound. To premise it on a vague right of privacy, rather than on the avoidance of potential violence, was a further departure from precedent. Still, the rule is here and, so long as the right to individual privacy is kept in balance with the public interest in suppressing activities like illegal gambling and drug peddling, who would complain?

It is difficult to see, however, what actual protection is given to any right of privacy by the announcement rule. Once identity and purpose are stated, entry must always be permitted; if permission is denied, or even delayed too long, entry may be forced, provided the officer has a valid purpose in gaining admission. Since there is no discretion in the occupant, what then does the notice do for his privacy? If he has something to hide, the knock will perhaps give him some time to hide it better or to dispose of it. If he plans to resist, or to flee, he will be alerted. On the other hand, if he plans none of these and is otherwise lawfully engaged, how will the knock benefit him? If the door is locked, he may be able to avoid a broken door by responding to the demand for entry. If he is engaged in very private activities, perhaps of a sexual nature, or is otherwise indisposed, he may have time to avoid embarrassment—but not interruption. Or if he is asleep, he will be spared the possible shock of awakening to find a stranger in his home (entry by stealth), or of awakening to the sound of a breaking door.

Thus balanced, the protections to privacy seem to be somewhat tenuous when compared to the potential for public harm. This is particularly true with respect to potential destruction of evidence, especially when one considers that the probable cause requirement would have to be met in any event. And where a statute provides for the issuance of "no-knock" warrants, the judicial review factor must be added to the scales. In jurisdictions where such warrants are available, courts should of course look with jaundiced eye upon officers who fail to obtain warrants without good cause. All this is not to say that privacy should not be protected—constitutionally, if warranted. Many, if not most, searches would be "'unreasonable" under the Fourth Amendment if preceded by an unannounced entry. But there is an extreme need for reasonable exceptions to be identified and clarified. Exclusionary rules will not deter if they are not understood by the cop on the beat.[107] Further, our view of privacy should be reconsidered. Would it not be inconsistent to permit electronic eavesdropping under the Fourth Amendment with appropriate judicial supervision,[108] and at the same time deny "no-knock" entry under limited circumstances with similar supervision? Which is the greater invasion of privacy?

It bears repeating that, if we are to continue to judge the announcement rule and its exceptions by Fourth Amendment standards, the somewhat vague and recent concept of privacy should not be given undue priority over more well-established concepts of reasonableness, expressed in comprehensible terms. Language from Mr. Justice Frankfurter's dissenting opinion in *United States* v. *Rabinowitz*, which was cited with approval by Mr. Justice Stewart is a more recent opinion overruling *Rabinowitz*,[109] helps to place the matter in perspective:

"To say that the search must be reasonable is to require some criteria of reason. It is no guide at all either for a jury or for district judges or the police to say that an 'unreasonable search' is forbidden—that the search must be reasonable. What is the test of reason which makes a search reasonable? The test is the reason underlying and expressed by the Fourth Amendment: the history and the experience which it embodies and the safeguards afforded by it against the evils to which it was a response." [110]

III. NEW APPROACHES TO NO-KNOCK

The proposed Controlled Dangerous Substances Act, S. 3246, contains a no-knock warrant provision similar to many of those mentioned earlier in this article.[111] Section 702 is divided into two subsections. Subsection (b) authorizes unannounced entries in circumstances where the judge or magistrate issuing the warrant is satisfied that there is probable cause to believe that, if the officers knocked and announced their authority and purpose, either the evidence sought could be quickly destroyed or the officers would be placed in danger of physical harm. These warrants may only be issued for offenses relating to controlled dangerous substances, and the warrant must state on its face that the officers executing it are authorized to dispense with knocking or announcing their authority and purpose. In addition, there is also a requirement that the officers identify themselves and their purpose as soon as possible after gaining entry.[112]

Strong opposition has been voiced against the proposed no-knock provision on both constitutional and policy grounds. Critics contend that the language of Section 702(b) authorizing the issuance of a no-knock warrant if "there is probable cause to believe that if such notice were to be given the property at issuance in the case may be easily and quickly disposed of . . ." is too ambiguous and open to a wide variety of interpretations.[113] Their argument is that the language does not make clear whether it is the nature of the property making it easily destroyed or disposed of that is intended to be grounds for issuance of the warrant, or whether it is intended that specific facts are required to be shown that the occupants of the premises to be searched are ready, willing, and able to destroy the evidence at the first sign of police intrusion.

The original intent of Section 702(b) was to require a twostep process for obtaining any no-knock warrant. The first is compliance with the requirements necessary for obtaining conventional search warrants, those being that there is probable cause to believe that a crime has been committed and that evidence or fruits of such crime are located on the premises to be searched. In applying for the no-knock authorization, a second set of criteria must be met. The applicants must, in addition, show there is probable cause to believe that contraband drugs are located on the premises and that, by their nature, they are capable of quick destruction, and might in fact be so destroyed should the occupants be made aware of an imminent police intrusion. In effect, a number of elements are required: probable cause to believe that contraband drugs are located on the premises; that such drugs by their nature can be easily destroyed or disposed of; and probable cause to believe that the occupants of the premises might in fact destroy such drugs upon notice by the police of their intent to execute a search warrant. These requirements clearly meet the criteria established in existing law.[114]

An alternative approach would be to require positivity rather than probable cause in any application for a no-knock authorization. This would comport with the general standard for the issuance of nighttime search warrants under Rule 41(e) of the Federal Rules of Criminal Procedure. Simply stated, a positivity standard requires a greater quantum of factual information than does the probable cause standard. Under normal probable cause standards, the judge or magistrate does not have to be positive that the evidence sought is located on the premises to be searched in order to grant the warrant. Rather, the applicant need only disclose sufficient facts to warrant an averment that the evidence sought is likely to be on the premises. However, such facts would be insufficient to meet the positivity test.[115]

Requiring a positivity tests for the issuance of no-knock warrants would mean that the applicant would have to disclose facts evidencing a positive belief that contraband drugs are on the premises to be searched, and that they are of such a nature that they can be easily disposed of or destroyed. This would be about the limit to which one could extend the criteria for issuance of the warrants while it would clearly remedy many of the ambiguities which the critics have found inherent. In provision, it would create a tougher burden on officers seeking no-knock authority. It also forces the courts to determine just what standards apply to "positivity" versus "probable cause," something they have merely talked around in nighttime warrant situations.[116] While a middle alternative, this approach is not necessary or recommended in the light of existing law.

Critics also assert that the proposed no-knock provision of doubtful constitutional validity, basing their conclusions on the Fourth Amendment's prohibition against unreasonable searches and seizures and the implied right of individual privacy.[117]

Taken in a broad context, the right of privacy is the right of an individual to be left alone and shielded from unwarranted governmental intrusions.[118] However, in the words of Justice Stewart, writing for the majority in *Katz* v. *United States*, . . . "the Fourth Amendment cannot be translated into a general constitutional 'right to privacy.' That amendment protects individual privacy against certain kinds of governmental intrusion, but its protection goes further, and often has nothing to do with privacy at all." [119] Some critics of the no-knock provision would find implicit in the right of privacy the requirement of advanced notice prior to any lawful governmental intrusion, such as the execution of a valid search warrant. However, the dimensions of an individual's right to privacy severely contract when one is dealing with the execution of a search warrant. For purposes of conducting a search, the officers authorized to execute the warrant are legally entitled to entry into the designated premises, with or without the consent of the occupant. Should an occupant refuse admission to the premises, the officers can go so far as to use necessary force.[120]

When the framers of the Constitution made provisions for the issuance and execution of search warrants, they recognized that there would be times when an individual would have to be deprived of his substantive right to privacy. To protect the individual should this event arise, the framers required the element of reasonableness in the conducting of any search. Hence, what we are really talking about when referring to the general rule requiring notice of authority and purpose prior to execution of a search warrant is a standard of reasonableness which is a balancing of probable cause, need and the individual's right to privacy. Reasonableness is not an equivalent for "right to privacy" the latter being a part of the former and weighed, with other factors, to determine proper legal equilibrium.

The no-knock provision, requiring court authorization for the dispensing of announcement, reasserts the general principle that reasonableness of a search demands notice of authority and purpose. It is also

Footnotes at end of article.

a codification of some exceptions to the general rule.[121] In effect, it is a Congressional declaration that under certain, specified circumstances, notice of authority and purpose can be dispensed with and the search still remain within the bounds of reasonableness.

Citing past experience in narcotic and dangerous drug law enforcement, Congress could rationally justify these two exceptions as being necessary for effective law enforcement. What Congress is saying is that under circumstances where prior notice would lead to destruction of evidence or would endanger the lives of the officers executing the warrant, an unannounced or forcible entry will not invalidate the search as unreasonable. Congress is making these two exceptions to the rule because past experience has demonstrated that evidence has often been destroyed or officers injured due to the fact they were required to give notice of their authority and purpose prior to effecting an entry.

However, the provision does not compel Congress to impose a loose standard. Rather, while Congress will make a general finding that notice of authority and purpose can lead to destruction of evidence or injury to the officers, the provision requires, in addition, that a neutral judge or magistrate make a specific finding of either of these two possible events in each individual case. Before notice of authority and purpose can be dispensed with, the judge or magistrate issuing the warrant must be satisfied that there is probable cause to believe that grounds exist. He must specifically find probable cause to believe either destruction of the evidence or injury to the agents will result if notice of authority and purpose are given. Probable cause requires more than mere generalities. Rather, it requires specific facts. A no-knock warrant under the proposed provisions cannot be issued solely on the basis that most drug traffickers keep their supply of drugs in a place where they can be easily disposed of. More specificity is required by the definition of probable cause. Information relating to the actual location of the drugs or the propensity of the suspect to be violent will have to be known by the agents and made available to the judge when applying for the warrant.

CONCLUSION

Having traced history, state, and federal activity regarding the requirement of announcing authority and purpose prior to entering a person's dwelling, the question settles down to a moral, rather than legalistic judgment as to whether or not "no-knock" should be permitted. Weighing values of privacy, potential for violence and the need to preserve evidence in drug cases, it is felt that no-knock authority is not only necessary but desirable within the framework of the Federal drug proposal. By setting out the statutory requirements instead of placing reliance on common law doctrines,[122] law enforcement has a source on which to rely in this area. Further the statute requires the interposition of a judge or magistrate before no-knock authority can be obtained in executing a warrant. This judicial supervision has been repeatedly favored by the Supreme Court and should be required in this instant situation.[123]

The time has come to stop theorizing about a situation that is happening and being executed daily by local law enforcement. What is needed is meaningful reaction, not rationalization. Only then is the Fourth Amendment upheld and the populace protected.

FOOTNOTES

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[1] Amendment IV, United States Constitution, provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[2] See Broom's Legal Maxims, p. 432.

[3] Year Book 13 Ed. 4, 9a (1455).

[4] (1603) 5 Coke 91.

[5] Co. 4th Inst. 177.

[6] 2 Hale, Pleas of the Crown 90–92 (1st Amer. ed. 1847).

[7] See Holdsworth, History of English Law, Vol. III, p. 598 *et seq.*

[8] See *Accarino* v. *U.S.*, 179 F.2d 456 (1949), discussion at p. 460–462.

[9] *Dystead* v. *Shed*, 13 Mass. 520 (1816).

[10] *Keith* v. *Johnson*, 31 Ky. 604 (1833).

[11] 4 Conn. 166 (1822).

[12] *Hawkins* v. *Commonwealth*, 53 Ky. 395 (1854).

[13] 120 Mass. 190 (1876).

[14] See Blakey, the Rule of Announcement and Unlawful Entry, 112 U. of Penn. Law Review at 508.

[15] "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

[16] *Miller* v. *U.S.*, 357 U.S. 301, 303 (1958) at note 8.

[17] 46 Cal. 2d 301; 294 P. 2d 6 (1956).

[18] 45 Cal. 2d 755; 290 P. 2d 855 (1955).

[19] Cases collected at 6 CJS Arrest § 14 after note 21.

[20] Section 1531 California Penal Code provides: "the officer may break open any outer door or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if after notice of his authority and purpose, he is refused admittance."

Cases collected in *People* v. *DeSantiago*. 453 P. 2d 353 (1969).

[21] Blakey, The Rule of Announcement and Unlawful Entry: *Miller* v. *United States* and *Ker* v. *California*, 112 U. Pa. L. Rev. 499, 532 (1964) at note 245.

[22] 67 Cal. 2d 586; 432 P. 2d 706 (1967).

[23] 67 Cal. 2d 586, 588; 432 P. 2d 760, 708.

[24] *People* v. *DeSantiago*, 76 Cal. Rptr. 809; 453 P. 2d 353, 359 (1969).

[25] *People* v. *Gastello*, 432 P. 2d 706, 708.

[26] Cf. *People* v. *Barnett*, 156 Cal. App. 2d 803; 320 P. 2d 128 (1958).

[27] 386 F. 2d 715 (9th Cir., 1967)

[28] *People* v. *Carillo*, 50 Cal. Rptr. 185; 412 P. 2d 377 (1968); *People* v. *Moore*, 140 Cal. App. 2d 870; 295 P. 2d 969 (1956).

[29] 66 Cal. Rptr. 1; 437 P. 2d 480 (1968).

[30] 78 Cal. Rptr. 504; 455 P. 2d 432 (1969).

[31] 374 U.S. 23 (1964).

[32] 391 U.S. 585, 589 (1968).

[33] 455 P. 2d 432, 436.

[34] See *Miller* v. *United States*, 357 U.S. 301, 309 (1958). *Hair* v. *United States*, 289 F. 2d 894 (1961).

[35] Fla. Stat. Annot. Sec. 901.19.

[36] 160 So. 2d 706 (1964).

[37] 160 So. 2d 706. 710.

[38] 172 So. 2d 628 (1965).

[39] Under *Chimel* v. *California*, 395 U.S. 752 (1969), such a search incidental to an arrest would no longer be permitted. See infra p. —.

[40] Utah Code Anno. §77–13–12 (1953) and Utah Code Anno. §19–611 (1947); Idaho Code Anno. §19–4409 (1947); Iowa Code Anno. §751.9 (1950); S.D. Code §23–22–18 (1967); S.D. Code, §23–15–14 (1967).

[41] 432 P. 2d 706 (1969).

[42] 437 P. 2d 489 (1968).

[43] 455 P. 2d 432 (1969).

[44] 15 Utar 2d 64; 387 P. 2d 240, 243 (1963).

[45] 76 W.D.2d 212; 455 P.2d 595 (1969).

[46] *State* v. *Young*, 455 P. 2d 595 at 597.

[47] The reader should note that the Washington Supreme Court specifically noted that its new rule was similar to the *Maddox* case. 455 P.2d at 598.

[48] Neb. Rev. Stat. §29411 (1965); N.Y. Code Crim. Proc. § 175 (1957); N.Y. Code Crim. Proc. §178 (1957); N.Y. Code Crim. Proc. §799, (1964); S.C. Code §53–198 (1962); S.C. Code, §17–257 (1962) and N.D. Cent. Code; §29–29.1–01 (1967).

[49] N.Y. Code Crim. Proc. §799.

[50] 374 U.S. 23.

[51] 16 N.Y. 2d 289, 213 N.E.2d 659 (1965), cert. denied 383 U.S. 963 (1966).

[52] 16 N.Y.2d at 292.

[53] 16 N.Y.2d at 292.

[54] *People* v. *Montanaro*, 299 N.Y.S. 2d 677 (Kings County Ct. 1962) *People* v. *McIlwain*, 28 A.D.2d 711; 281 N.Y. S.2d 218 (1967); *People* v. *Coochiara*, 221 N.Y.2d 857 (N.Y. County Ct. 1961).

[55] 18 U.S.C. 3109 reads, "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant."

[56] D.C. Code Ann. §25–129(g) (1961) (liquor); D.C. Code Ann. §33–414(g) (1961) (narcotics).

[57] 18 U.S.C. 3109.

[58] *U.S.* v. *Miller*, 357 U.S. 301, 306 (1958); See Blakey, 112 U. Pa. L. Rev. 499, 513 for a more complete explanation of the applications of 18 U.S.C. 3109 to the District of Columbia.

[59] 179 F. 2d 456 (1949).

[60] See infra at p. —. See Blakey, 112 U. Pa. L. Rev. 499, 510–514.

[61] 357 U.S. 301 (1958).

[62] See generally, Blakey, 112 U. Pa. L. Rev. 499, 516–531.

[63] 287 F. 2d 126 (D.C. Cir. 1960).

[64] 289 F. 2d 894 (D.C. Cir. 1961).

[65] 289 F. 2d 894, 986.

[66] *Woods* v. *U.S.*, 240 F. 2d 37 (D.C. Cir. 1956).

[67] A mere hint is gleaned from examining 43A Words & Phrases, 94 *et seq.*

[68] See Mitchell & Mitchell, A Biography of the Constitution of the United States, p. 199.

[69] See, *e.g. Accarino* v. *U.S.*, 179 F. 2d 456 (1949); *Miller* v. *U.S.*, 357 U.S. 301 (1958).

[70] *Carroll* v. *U.S.*, 267 U.S. 132, 149 (1924).

[71] *Ker* v. *California*, 374 U.S. 23 (1963).

[72] 357 U.S. 301 (1958).

[73] 179 F. 2d 456 (1949).

[74] 179 F.2d at 464.

[75] *Id.* at 465.

[76] 357 U.S. at 313; 179 F.2d at 464.

[77] 5 Coke 91 (1603).

[78] 179 F.2d at 460.

[79] 357 U.S. at 308.

[80] Id. at 307.

[81] Broom's Legal Maxims, p. 432.

[82] See note 15.

[83] 357 U.S. at 313.

[84] *e.g. U.S.* v. *Barrow*, 212 F. Supp. 837, 845, where Judge Lord relied upon *Miller* as interpreting 18 U.S.C. 3109 to apply to the broad range of search and seizure situations. As he put it, "plainly stated, the Court has to decide not the application of a local rule as such, but whether or not the criteria of Section 3109 has been met . . ."

[85] 371 U.S. 471 (1963).

[86] *Id.* at 474.

[87] *Id.* at 484.

[88] 374 U.S. 23 (1963).

[89] *Id.* at 46.

[90] *Id.* at 41.

[91] *Id.* at 28.

[92] *Id.* at 38.

[93] See *Leahy* v. *United States*. 272 F.2d 487 (1960, *cert. granted*, 363 U.S. 810 (1960), *dismissed by stipulation* 364 U.S. 945 (1961); *Jones* v. *United States* 304 F.2d 381 (1962), *cert. denied*, 371 U.S. 351 (1963).

[94] 374 U.S. at 41.

[95] "(1) where the persons within already know of the officers' authority and purpose, or (2) where the officers are justified in the belief that persons within are in imminent peril of bodily harm, or (3) where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door), are then engaged in activity which justifies the officer's belief that an escape or the destruction of evidence is being attempted."

[96] 386 F.2d 715 (1961)

[97] *People* v. *Gastelo*, 63 Cal. Rptr. 10; 432 P.2d 706 (1967)

[98] 386 F.2d 715, 718.

[99] See *La Peluso* v. *California*, 239 Cal. App. 2d 715, cert denied 385 U.S. 829 (1966).

[100] See, *e.g. People* v. *DeLago*, 16 N.Y. 2d 289 (1965), cert denied, 383 U.S. 963 (1966).

[101] 391 U.S. 585 (1968).

[102] See 391 U.S. at 490, n. 7, which indicates that the Court is not willing to go out of its way to discontinue the established view of entry by ruse as being outside the scope of "breaking." Raised as a Constitutional issue, the result might be different.

[103] 391 U.S. at 491, n. 7.

[104] 18 U.S.C. 3109.

[105] e.g., to avoid loss of life; when there is virtual certainty purpose is known.

[106] *Boyd* v. *U.S.*, 116 U.S. 616 (1886).

[107] See Blakey, The Rule of Announcement and Unlawful Entry, 112 U. Pa. L. Rev. 499, 583 (1964).

[108] See *Berger* v. *New York*, 388 U.S. 41 (1967).

[109] *Chimel* v. *California*, 395 U.S. 752 (1969). In Chimel, police officers, after serving the defendant with an arrest warrant at his home, proceeded to search the entire house for items taken in an alleged burglary as incident to the arrest. The Court invalidated the search as being unreasonable since, even though it was incident to a valid arrest, there was no probable cause. The Court limited a search incident to an arrest to the arrestee's person and the area "within his immediate control"—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

[110] 339 U.S. at 83.

[111] Any officer authorized to execute a search warrant relating to offenses involving controlled dangerous substances the penalty for which is imprisonment for more than one year, may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States Magistrate issuing the warrant is satisfied that there is probable cause to believe that if such notice were to be given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, and has included in the warrant a direction that the officer executing it shall not be required to give such notice: *Provided*, That any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

[112] This proviso was included in the Senate Judiciary Committee to insure reasonably prompt notice to the occupants and thereby minimize the possibility of mistake of intent and potential violence.

[113] S. Rep. No. 91–613, 91st Cong., 1st Sess., 159 (1969).

[114] See supra.

[115] Rule 41(e) of the Federal Rules of Criminal Procedure requires for the issuance of a nighttime search warrant that the affidavit disclose sufficient facts to warrant the affiant in asserting a positive belief that the evidence is located on the premises to be searched. *United States* v. *Raidle*, 250 F. Supp. 278 (1965). An exception is made to Rule 41(e) for issuance of search warrants involving narcotic drugs. Section 1405 of Title 18, United States Code, permits the execution of search warrants relating to offenses involving narcotic drugs at any time of the day or night if there is probable cause to believe that grounds for the warrant exist. 18 U.S.C. 1405. This same exception has been incorporated in Section 702(a) of the proposed Controlled Dangerous Substances Act.

[116] *United States* v. *Castle*, 213 F. Supp. 52 (D.D.C. 1962) *Distefano* v. *United States*, 58 F. 2d 1963 (5 Cir., 1932).

[117] S. Rep. No. 910613, 91st Cong., 1st Sess., 159 (1969).

[118] *United States* v. *Katz*, 389 U.S. 347, (1968).

[119] 389 U.S. 347, 349

[120] *Butler v. United States*, 275 F. 2d 889 (CA.D.C. 1960).

[121] Under the proposed no-knock provisions, the only times unannounced entries will be permitted are when knocking and announcing authority and purpose would either lead to the quick destruction of the evidence sought or where the officers executing the warrant are placed in danger of physical harm.

[122] Note that in many states, Federal officers are also considered state peace officers and can execute state laws under state procedures, e.g. California.

[123] *United States* v. *Katz*, 389 U.S. 347, (1968) *Sibron* v. *New York*, 392 U.S. 40 (1968) *McDonald* v. *United States*, 335 U.S., 451, (1948)

APPENDIX.—STATES REQUIRING ANNOUNCEMENT OF AUTHORITY AND PURPOSE BEFORE FORCED ENTRY TO EXECUTE SEARCH WARRANTS OR ARRESTS (WITH OR WITHOUT A WARRANT)

State	Search warrant	Arrests (with or without warrant)
Alabama	Notice required (Code of Ala. 15.108)	Notice required (Code of Ala. 15.153, 15.155).
Alaska	No-knock permitted (Alaska Stat. 12.35.040)	Notice required (Alaska Stat. 12.25.100).
Arizona	Notice required (State v. Mendoza—454 P.2d 140 (1968) allows "no-knock" for destruction exception) (Ariz. Rev. Stat. 13–1446(B)).	Notice required (Ariz. Rev. Stat. 13–1411).
Arkansas	No statute, common law applies	Notice required (Ark. Stat. 43–414).
California	Notice required [1] (Calif. Penal Code, sec. 1531)	Notice required [1] (Calif. Penal Code, sec. 844).
Colorado	No statute, common law applies	No statute, common law applies.
Connecticut	No statute, common law applies (State v. Marino, 152 Conn. 85, 203 A. 2d 305 (1964) allows no-knock for destruction exception to common law announcement rule).	Do.
Delaware	No statute, common law applies (Dyton v. State, 250 A.2d 383 (1969), allows no-knock for destruction exception to common law announcement rule).	Do.
District of Columbia	Notice required (D.C. Code Ann. 25–129(g) (liquor) D.C. Code Ann. 33–414(g) (narcotics) 18 U.S.C. 3109. But an annotation to sec. 23–301, par. 6 states that for search or arrest that the police can break in after an announcement of identity and purpose. There are no exceptions. "Breaking and entering premises without an announcement is clearly illegal and an improper entry renders a subsequent search invalid.")	No provision, common law applies.
Florida	Notice required (Fla. Stat. 933.09) (Benefield v. State, 160 So. 2d 706 (1964) allows no-knock for destruction exception).	Notice required (Fla. Stat. 901.19).
Georgia	Notice required (Code of Ga. Ann. 27–308). The arrest provision states that the police may use force to break into a building and does not require any announcements prior to the breaking. The new search statute does require an announcement before breaking.	No-knock permitted only with warrant (Code of Ga. Ann. 27–205).
Hawaii	No-knock permitted if door to house is open. Notice required if door is closed. (Hawaii Rev. Stat., title 37, sec. 708.37)	Notice required (Hawaii Rev. Stat. title 37, sec. 708.11).
Idaho	Notice required (Idaho Code 19–4409)	Notice required (Idaho Code 19–611).
Illinois	No-knock permitted (Ill. Ann. Stat., title 38, sec. 108–8). The arrest statute states that no notice or announcement required for arrest but People v. Barbee, 35 Ill. 2d 407, 220 N.E. 2d 401 (1966) requires announcement before arrest. The search warrant section concludes that notice is not necessary if constitutional standards (of reasonableness) are met. People v. Hartfield, 94 Ill. App. 2d 421, 237 N.E. 2d 193 (1968). People v. Macias, 39 Ill. 2d 208, 234, N.E. 2d 783 (1968) allows no-knock for destruction exception.	No-knock permitted (Ill. Ann. Stat., title 38, sec. 107–5(d)).
Indiana	No statute, common law applies Hadley v. State, 238 N.E. 2d 888, 906 (1968), allows no-knock for destruction exception to the common law rule of announcement.	Notice required (Ind. Ann. Stat. 9–1009).
Iowa	Notice required (Iowa Code Ann. 755.9)	Notice required (Iowa Code Ann. 751.9).
Kansas	No statute, common law applies	Notice required (Kansas Stat. Ann. 62–1819).
Kentucky	do	Notice required (Ky. Rev. Stat. 70.077 and 70.078).
Louisiana	No-knock permitted (La. Code of Crim. Pro. title V (Art. 164)) the new statute on arrests without warrants is broader now and not limited only to felonies.	Notice required (La. Code of Crim. Procedure title V (Art. 224)).
Maine	No statute, common law applies [2]	No statute, common law applies.[2]
Maryland	do [3]	Do.[3]
Massachusetts	No statute, common law applies (Commonwealth v. Rossetti, 211 N.E. 658, 665 (1965) court referred to no-knock for destruction exception to the common-law rule of announcement in dictum).	No statute, common law applies.
Michigan	Notice required (Mich. Stat. Ann. 28–1259 (6)) the search provision had not be included previously	Notice required (Mich. Stat. Ann. 28,880).
Minnesota	No statute, common law applies (State v. Parker, 283 Minn. 127, 166 N.W. 2d 347 (1969).)	Notice required (Minn. Stat. Ann. 639.33 and 639.34).
Missouri	No-knock permitted (Vernon's Ann. Mo. Stat. 542.390)	Notice required (Vernon's Ann. Mo. Stat. 544.200).
Mississippi	No statute, common law applies	Notice required (Miss. Code of 1942, 2472).
Montana	No-knock permitted [4] (Rev. Code of Montana 1947 (95–809))	Notice required [4] (Rev. Code of Montana 1947 (94–6011)).
Nebraska	No-knock permitted [5] (Rev. Stat. of Neb. 29-411)	No-knock permitted [5] (Rev. Stat. of Neb. 29–411).
Nevada	Notice required (Nev. Rev. Stat. 179.090)	Notice required (Nev. Rev. Stat. 171.138).
New Hampshire	No statute, common law applies	No statute, common law applies.
New Jersey	do [6]	Do.[6]

Footnotes at end of table.

APPENDIX.—STATES REQUIRING ANNOUNCEMENT OF AUTHORITY AND PURPOSE BEFORE FORCED ENTRY TO EXECUTE SEARCH WARRANTS OR ARRESTS (WITH OR WITHOUT A WARRANT)—Continued

State	Search warrant	Arrests (with or without warrant)
New Mexico	No statute, common law applies.	No statute, common law applies.
New York	No knock permitted. (The officer may break open an outer or inner door or window of a building, or any part of the building, or anything therein, to execute the warrant, (a) if, after notice of his authority and purpose, he be refused admittance, or (b) without notice of his authority and purpose, if the judge, justice, or magistrate issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice. The judge, justice, or magistrate may so direct only upon proof under oath, to his satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given. As amended L. 1964, c. 85, eff. July 1, 1964.) (N.Y. Code Crim. Procedure, sec. 799.)	Notice required (N.Y. Code of Crim. Procedure, sec. 175—arrest with warrant—and sec. 178—arrest without warrant).
North Carolina	No statute, common law applies.	Notice required (Rev. Stat. of N.C. 15.44).
North Dakota	No-knock permitted if judge so provides (N.D. Code 29-29.1-01).	Notice required (N.D. Code 29-06-14).
Ohio	Notice required U.S. v. Blank, 251 F.Supp. 166 (1966) and State v. Johnson, 16 Ohio Misc. 278, 240 N.E. 2d 574 (1968) allow no-knock for destruction exception). (Ohio Rev. Code Ann. 2935.12)	Notice required (Ohio Rev. Code Ann. 2935.12).
Oklahoma	Notice required (Okla. Stat. Ann. Title 22, Sec. 1228).	Notice required (Okla. Stat. Ann. title 22 sec. 194 (arrest with warrant) sec. 197 (arrest without warrant).
Oregon	Notice required (State v. Cortman, 466 P. 2d 681, 683 (1968) allows no-knock for destruction exception; cites People v. Maddox (Calif.)) (Oreg. Rev. Stat. 141.110).	Notice required (Oreg. Rev. Stat. 133.290 (arrest with warrant) 133.320 (arrest without warrant)).
Pennsylvania	No statute, common law applies (Manduchi v. Tracy, 350 F.2d 658 (1965) cert. denied, 382 U.S. 943 allowed no-knock for destruction exception to common law rule of announcement).	No statute, common law applies.
Rhode Island	No statute, common law applies (State v. Johnson, 230 A.2d 831, allows no-knock for destruction exception to common-law rule of announcement.)	Do.
South Carolina	No-knock permitted (S.C. Code Sec. 17-257).	Notice required (S.C. Code Sec. 53-198).
South Dakota	Notice required (S.D. Comp. Laws. Ann. 1967, Sec. 23-15-14).	Notice required (S.D. Comp. Laws Ann., 1967, Sec. 23-22-19).
Tennessee	Notice required (Tenn. Code. Ann. 40.509).	Notice required (Tenn. Code Ann. 40.807).
Texas	No-knock permitted (Vernon's Tex. Stat. Ann. Code of Crim. Proc., art. 18.18).	Notice required (Vernon's Tex. Stat. Ann. Code of Crim. Proc. Art. 15.25).
Utah	No-knock permitted 1967 Amendment to search warrant provisions reads: "Officer may break door or window to execute warrant—Authority. The officer may break open any outer or inner door or window of a house, or any part of a house or anything therein, to execute the warrant: (1) If, after notice of his authority and purpose, he is refused admittance; or (2) Without notice of his authority and purpose, if the judge, justice, or magistrate issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice. The judge, justice, or magistrate may so direct only upon proof under oath, to his satisfaction, that the property sought is a narcotic, illegal drug, or other similar substance which may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or any other may result, if such notice were to be given." Also see State v. Louden, 15 Utah 2d 64, 387 p. 2d 240 (1963).) (Utah Code Ann. 1953, 77-54-9).	Notice required (Utah Code Ann. 1953, 77-13-12).
Vermont	No-knock permitted (Vermont Stat. Ann. 24.302).	No-knock permitted (Vermont Stat. Ann. 24.302).
Virginia	No statute—common law applies.	No statute. Common law applies.
Washington	do [2]	Notice required [7] (Rev. Code of Wash. Ann. 10.31.040).
West Virginia	No-knock permitted for structures other than a "dwelling" (W. Va. Code 62.1A-5).	No statute. Common law applies.
Wisconsin	No statute. Common law applies.	Do.
Wyoming	Notice required.	Notice required for arrest with warrant (Wy. Stat. Ann. 7-165) No statute for arrest without warrant—Common law applies.

[1] People v. Maddox, 204 P. 2d 6 (1956) allow no-knock; people v. Gostelo, 432 P. 2d 706 (1967) for destruction; People v. Rosales, 437 P. 2d 489 (1968) exception.

[2] State v. Martelle, 252 A. 2d 316 (1969) allows no-knock as an exception to the common-law rule of announcement "An officer * * * is bound, on demand to make known his authority, but his omission to do so can do no more than deprive "him" of the protection which the law throws around its ministers, when in the rightful discharge of their duty."

[3] Henson v. State, 236 Md. 518, 204 A. 2d 516 (1969) and Waugh v. State, 3 Md. App. 379, 239 A. 2d 596. Both cases allow destruction exception to the common law rule of announcement.

[4] The general arrest statute and the search statute give the right to break in without the requirement of notice. The arrest with or without warrant statutes require notice unless notice would jeopardize the arrest.

[5] "Warrants: execution; powers of officer; direction for executing. In executing a warrant for the arrest of a person charged with an offense, or a search warrant, or when authorized to make an arrest for a felony without a warrant, the officer may break open any outer or inner door or window of a dwelling house or other building, if, after notice of his office and purpose, he is refused admittance;" or without giving notice of his authority and purpose, if the judge or magistrate issuing a search warrant has inserted a direction therein that the officer executing it shall not be required to give" such notice, but the political subdivision from which such officer is elected or appointed shall be liable for all damages to the property in gaining admission. The judge or magistrate may so direct only upon proof under oath, to his satisfaction that the "property sought may be easily or quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such" notice be given; but this section is not intended to authorize any officer executing a search warrant to enter any house or building not described in the warrant.)

[6] State v. Juliano, 97 N.J. Super. 25, 234 A. 2d 236 (1967) allows No-Knock for destruction exception to common law rule of announcement.

[7] State v. Young, 76 W. D. 2d 212, 455 p. 2d 595 (1969) allows No-Knock for destruction exception.

Note.—The citations listed in the above appendix are illustrative only and in no way are to be considered as all inclusive.

Mr. PELL. Mr. President, will the Senator yield for a question?

Mr. DODD. I am happy to yield.

Mr. PELL. I should like to ask a general question, not with specific reference to the amendment, but one which concerns me. Do I correctly understand that a differentiation is made as to the sale of different kinds of drugs; but so far as possession goes, as to LSD, marihuana, or heroin, they are all treated alike?

Mr. DODD. On a first and second possession offense, they are.

Mr. PELL. They are all treated alike on a first offense, for mere possession?

Mr. DODD. Yes.

Mr. PELL. I would submit that we, the older generation, are not really aware—maybe the Senator from Connecticut is, but I think many of us are not really aware—of what the mores and customs are of many of those who are under 25 today. I would submit that the treatment of possession of marihuana, on a first offense, on the same basis as the treatment of possession of heroin, would not be advisable. I am not suggesting that marihuana should be legalized, but I am wondering if there should not be a differentiation here, because I doubt whether there are many young people in this country of the age I have mentioned who can say they have never smoked marihuana.

Because of that, I wonder if we should not differentiate it here. I am not excusing it or condoning it, but what I have stated is, I think, a fact.

Mr. DODD. Let me respond to the Senator in this fashion: I think the Senator is absolutely right, that a first offense of possession of marihuana usually is quite a different offense from that of the possession of heroin. I have been quite distressed about this, as has the Senator, for a long time. That is why we put in title VIII, calling for the in-depth study of marihuana. In the meantime, the bill reduces the penalty for possession of marihuana, and the limit that can be imposed would be 1 year.

Mr. PELL. But that is the same limit as on heroin, for a first offense, is it not?

Mr. DODD. Yes, we do reduce the possession penalties on all of the covered drugs.

But I believe we have got to hold the line on marihuana until we get this study completed, because nobody knows, really, how damaging it is, or how addictive it is. Not enough is known about it, or not enough is known definitively about it. My own view of it is, after making the study as well as I could, that we had better just hold the line until we do know. I think that is the best course for us to follow.

Mr. PELL. I appreciate the Senator's response. He has done a great job with this bill. I cannot agree with him on the similarity of treatment of first offenders with respect to possession of all drugs being treated alike, but perhaps this will be worked out later on in the bill.

Mr. DODD. We took that approach because the user is usually the victim, a sick person. And whether he be a heroin user or a marihuana user he should be treated as a sick person, not subjected to harsh imprisonment. I would be glad to listen to an argument against this position of which I could be convinced.

We have reduced marihuana penalties to a misdemeanor and I do not think we should go any further until we know a lot more about marihuana. We do know, for example, that some of the Asiatic marihuana is about as bad as any drug can be. It is really destructive of the human nervous system and can cause psychotic breaks.

I am one of those who think that the massacre at Mylai could have been in

part attributable to the use of that kind of marihuana.

There is abundant scientific evidence to support the fact that Asian marihuana is a harmful, destructive drug. Other grades of it are not. We have this conflict of opinion between eminent scientists.

So I say to the Senator, what do we do under the circumstances? What can I recommend to the Senate other than what I have—that we hold the line, take away mandatory provisions of the law, give the judges leeway so that they can distinguish between a youngster caught with two or three cigarettes and a professional peddler of marihuana, do away with the mandatory requirement that he go to prison, but maintain a penalty, until we can have a clearer idea of what we are dealing with?

Mr. PELL. Right. But, in this connection, most of the young people on the campuses, at one time or another—the parents hate to admit it—have smoked or have had in their possession a marihuana cigarette, and for them to be liable to a year's imprisonment seems incorrect. If it is a misdemeanor, requiring 30 days or something like that, then I think one can move in and seek to eliminate this habit. If the penalty is too severe, what happens is what is happening now, that the judges just wash it out and the youngsters are not really harassed by it, or, if they are harassed, they are harassed to an extreme.

Mr. DODD. Under the provisions of this bill, the judge will be able to impose a 30-day sentence or even a 10-day sentence, or a 5-day sentence, or even a suspended sentence. He does not have to send anybody to prison. Yet, at the same time, he has the power to send to prison the fellow he thinks ought to go there because the circumstances warrant it.

I agree. I think the Senator raises a very serious point, and I think we ought to consider it very carefully. I do not want to give him the impression that I brush this aside. I do not do so at all. I know what he is talking about, and it is one of the most difficult problems we have had in dealing with the writing of this bill.

Mr. PELL. Along that line, under the general mores of our community, if the mother and father go out and get soused on Saturday night, that is not approved, but it is accepted. But if the children get equally high on marihuana, that is very much frowned upon and is very reprehensible; and it is hard for the young people not to believe that we are hypocritical when we condone the one and condemn the other.

Another question that I would ask the Senator from Connecticut, which has bothered me as an individual——

Mr. DODD. May I answer the Senator's observation about getting "soused," as he very well put it?

I am aware of this. People have said this to me. My own children have talked about it. We have to think about this point.

But my understanding is that, bad as the excessive use of alcohol is, it does not have the potential power to create the severe psychosis that certain types of marihuana do. And I am told marihuana can do this in a very short period of time because it is an hallucinogen, like LSD. Here, again, we are going to hear arguments on both sides.

Mr. PELL. I should like to make one little reply in reference to the Mylai disaster. As I understand it, and I feel very square in never having smoked a marihuana cigarette—and I think it unlikely, though nothing is impossible, that that day will come——

Mr. DODD. Wait until next week.

Mr. GORE. Is the Senator going to have a party? [Laughter.]

Mr. PELL. No.

As I understand it from reliable younger sources, marihuana does not increase the aggressive instincts of individuals. Alcohol does. Crimes of violence are more likely to occur under the stimulus of alcohol than of any other drug. In consequence, I would doubt that that massacre was the direct result of a drug which is basically a depressant and not an "arouser-upper."

Mr. DODD. I hope I did not say that I thought the tragedy was the direct result.

Mr. PELL. The Senator said only that it might have been.

Mr. DODD. I think it very well might have been. It is no secret. I talked with Captain Medina and his lawyer about this aspect of the problem. He came to my office, and I went over it with him as well as I could. What he said to me does not warrant my saying that what happened was the result of it. But he did admit it was a problem among his troops and that it is found in every nook and corner in Vietnam. My own knowledge is based on medical reports from Vietnam that depict terrible acts of brutality and aggression on the part of soldiers because they went into psychotic states, and became hysterical after smoking the local variety of marihuana.

I will be glad to supply the Senator with incident after incident in our records of users of marihuana doing brutish, sadistic, and terrible things to other human beings. This usually does not happen. But some types of it apparently bring this on in some people. That is what makes this problem so difficult to handle.

Mr. PELL. I appreciate the Senator's comments. I think he has studied the matter more deeply than I have and knows much more of the subject in depth.

I have another question to ask, which has bothered me as an individual, and it is in connection with the sale of drugs.

I derive the impression that so-called hard drugs—heroin and things of that sort—are really like the numbers racket and gambling, are really the underpinnings of organized crime, but that the sale of marihuana is not the responsibility or the doing of organized crime to anywhere near the same extent. Is that correct?

Mr. DODD. I think that is substantially correct. But I would not want to leave the impression that organized crime has left this alone, because it has not. There is some evidence that they are in this area and have been operating there. The Senator can be sure that if organized crime thinks it can make profit out of this traffic, it will get into it.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. DODD. I yield.

Mr. MANSFIELD. I would hazard the guess that as this habit increases and perhaps becomes more expensive, then organized crime might very well move in, as they have done in the field of narcotics, as we understand the use of that term, even in the high schools and down into the grade schools, and in groups around the corner stores; because they are always looking for outlets, so to speak, and products which they can push and make a profit on.

So I do not think we could forgo that possibility. If good, decent legislation, aware of all the facts concerned, is not enacted, I would hazard the guess that the trend would be in that direction.

Mr. DODD. I think the Senator is 1,000 percent correct. I am glad he made that statement.

Mr. PELL. With my tongue in cheek, perhaps one of the solutions would be that, as organized crime becomes increasingly respectable, as we hear it does as they move into respectable businesses—and I read a book the other day entitled "The Godfather" and found there were elements in organized crime who felt it is not respectable to have anything to do with drugs but that it is perfectly all right to have something to do with gambling or with murder. I would hope that this differentiation would not come about to too great an extent to make one element of organized crime respectable.

Mr. DODD. The idiosyncrasies of criminals are wonderful to behold. Someone should write a book on the subject.

Mr. PELL. "The Godfather" is one.

Mr. DODD. I have not read it. I will try to get a copy of it.

ORDER FOR ADJOURNMENT TO 11 O'CLOCK A.M. ON MONDAY, JANUARY 26, 1970

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 o'clock a.m. on Monday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR TYDINGS FOR 1 HOUR ON MONDAY MORNING NEXT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on Monday next, immediately following the prayer and disposition of the reading of the Journal, the able senior Senator from Maryland (Mr. TYDINGS) be recognized for not to exceed 1 hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONTROLLED DANGEROUS SUBSTANCES ACT OF 1969

The Senate continued with the consideration of the bill (S. 3246) to protect the public health and safety by amending

the narcotic, depressant, stimulant, and hallucinogenic drug laws, and for other purposes.

AMENDMENT NO. 455

Mr. McINTYRE. Mr. President, first and foremost, I want to congratulate the distinguished Senator from Connecticut (Mr. DODD) for the long and hard work he and his subcommittee must have gone through to bring this very important bill finally to the floor of the Senate.

Mr. President, as we enter the decade of the seventies, America faces some of the most serious social problems in our history. High on the list is the problem of drug abuse and addiction. The magnitude of this problem is such that we cannot hope to solve it through governmental efforts alone. Despite the best efforts of the Federal, State, and local governments, the problem has continued to grow. In my opinion, therefore, this terrible social ill can be overcome only through the cooperative efforts of government at all levels, together with the active participation of a concerned and aroused citizenry.

I am a firm believer in the principle of citizen involvement in the solution of social problems. There are millions of people in our Nation who are deeply concerned about the drug problem and they are expressing this concern in many ways. As parents they are doing all they can to assure that their family is not affected directly by the drug problem. In addition, they are expressing their concern as individuals, to the press and to their local, State, and national officials.

Beyond this, many are working through a vast number of organizations at the local, State, and national levels to bring the weight of these organizations to bear in meeting the problems of drug abuse and addition through programs of education, prevention, and rehabilitation.

These organizations include educational associations, civic associations, service clubs, fraternal organizations, labor organizations, women's clubs, professional associations, church groups, hospital organizations, youth groups, and many others. In addition, many of our corporate citizens are involving themselves in various ways in trying to combat the drug problem.

At the risk of seeming not to give due recognition to any one of the groups who is doing such an able job, I would like to mention particularly the efforts being exerted by the Junior Chamber of Commerce and the Lions and Kiwanis Clubs, for I know of their work and have the highest praise for what they are doing.

During recent trips to my own small State of New Hampshire, I have been impressed with the large number of individuals and organizations which are trying to make some headway in dealing with the drug problem. A meeting on the drug problem will bring out a surprisingly large proportion of the citizenry in a town of most any size.

I believe that the interest of my wife Myrtle is typical of that of most citizens. Her interest developed first as a mother, then a citizen. She has found, as I have, that there is an overwhelming interest of people in this subject. On trips to New Hampshire, Mrs. McIntyre was continually questioned by interested persons about what they could do to help. They asked her how their clubs and societies could become more active, better educated in this area, and what they could do to have the greatest impact.

In fact, Mrs. McIntyre is in New Hampshire at this very moment meeting with a broad segment of individuals and groups on this subject. Her schedule is as tight and busy as nearly any I have when I make a trip to New Hampshire. She had merely indicated to a few people that she was interested in trying to help and suddenly she was inundated with requests to visit with them and to help them do the best possible job.

I do not report these actions of my good wife in any spirit of McIntyre family egocentricity, but purely to set forth another example of the enormous interest of the American people in drugs and their desperate desire to do something.

Recent public opinion polls show that 90 percent of the American people share a deep and abiding concern over drug abuse. Very few issues in our Nation show such an overwhelmingly high percentage of deep citizen interest.

The Christian Science Monitor said in a recent editorial:

> In the crescendoing concern over drug use by teen-agers, more and more citizens committees and parents groups are usefully getting into the act. As President Nixon has said, the answer to the drug problem isn't law enforcement alone; education is vital, and where teen-agers are concerned this means education supplied by parents, teachers, churches, and local and federal agencies.

Dr. Sidney Cohen, Director of the Division of Narcotic Addiction and Drug Abuse of the National Institute of Mental Health, one of the most distinguished authorities in this field, said recently:

> The mere passage of laws as a device to eliminate noxious behavior is an ineffective technique. What is needed in addition to sagacious laws is public education and public cooperation with those laws.

President Nixon has stressed many times the need for people to involve themselves in helping to solve the great problems of the day, and Mrs. Nixon has devoted much of her time to promoting the cause of voluntary groups in many areas.

Mr. President, I believe that the great groundswell of desire to participate in combatting the drug problem which is now beginning to build must not be splintered or misdirected, or made impotent because it has no cohesion or direction.

I believe we can harness this great force, but we need a mechanism to provide information and direction.

For this reason, Mr. President, I am proposing the establishment of a Presidential advisory committee to bring together the best minds in the Nation to study the extent to which private, nongovernmental organizations are already involved in efforts to prevent drug abuse and addiction, to advise on the ways to foster and best utilize the efforts of such groups in our overall fight against the drug problem.

In order to accomplish this purpose I submit an amendment, intended to be proposed by me, to S. 3246, which provides for the establishment of such a committee, and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table; and, without objection, the amendment will be printed in the RECORD following the Senator's remarks.

Mr. McINTYRE. Mr. President, the amendment provides that the committee will be composed of 21 members to be appointed by the President with no more than seven to come from the Federal Government including the legislative branch.

The life of the committee will be for 1 year. The members will elect their chairman from among themselves.

The amendment also authorizes the expenditure of $250,000 for staff and other necessary expenses.

Mr. President, because of the gravity of the problem of drug abuse and addiction, I believe that S. 3246 ranks among the most important pieces of legislation with which we shall have to deal in this session of the Congress. I shall give it my wholehearted support and I am confident that the vast majority of my colleagues will do likewise.

However, I hope that my colleagues will also recognize that if we are to deal effectively with this problem, it is essential that we harness and give direction to the vast interest and effort on the part of private individuals and organizations which is just beginning to build and to coordinate these efforts with government activities at all levels.

I urge my colleagues to support the amendment I have offered to accomplish this worthwhile purpose.

The amendment submitted by Mr. McINTYRE is as follows:

AMENDMENT NO. 455

On page 3, after the item "SEC. 709. Payments and Advances", strike out everything preceding "TITLE IX—MISCELLANEOUS", and insert in lieu thereof the following:

"TITLE VIII—ADVISORY COMMITTEES

"SEC. 801. Establishment of committee on marihuana.

"SEC. 802. Establishment of committee on nongovernmental drug abuse prevention and control."

On page 87, line 3, strike out "COMMITTEE ON MARIHUANA" and insert in lieu thereof "ADVISORY COMMITTEES".

On page 87, line 4, strike out "Establishment of Committee" and insert in lieu thereof "Establishment of Committee on Marihuana".

On page 89, between lines 21 and 22, insert the following new section:

"ESTABLISHMENT OF COMMITTEE ON NON-GOVERNMENTAL DRUG ABUSE PREVENTION AND CONTROL

"SEC. 802. (a) There is hereby established a Committee on Non-Governmental Drug Abuse Prevention and Control (hereinafter referred to in this section as the "Committee") for the purposes of (1) studying the extent to which non-governmental organizations are involved in the prevention and control of drug abuse or addiction, and (2) advising as to how such organizations can best be fostered and encouraged.

"(b)(1) The committee shall be composed of twenty-one members, no more than seven of whom may be Members of Congress or

otherwise employed by the Federal Government, to be appointed by the President.

"(2) The committee shall elect a chairman from among its members.

"(3) The members of the committee shall serve without compen ation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the committee.

"(4) The committee shall submit a report of its findings and recommendations to the President and Congress within one year after the date of enactment of this Act. Thirty days after submitting such report, the committee shall cease to exist.

"(c) In order to carry out the purposes of this section, the committee is authorized—

"(1) to appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

"(2) to obtain the services of experts and consultants, in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed the rate for a grade GS–18 of the General Schedule for employees for each day (including travel time) during which they are engaged in the actual performance of their duties for the committee. While traveling on official business in the performance of duties for the committee such persons so employed shall be allowed expenser of travel, including per diem instead of subsistence, in accordance with section 5703 of title 5, United States Code.

"(d) The Committee is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance it deems necessary to carry out its purpose under this section; and each such department, agency, and instrumentality is authorized to cooperate with the Committee and, to the extent permitted by law, to furnish such information and assistance to the Committee upon request made by the Chairman or any other member when acting as Chairman.

"(e) The General Services Administration shall provide administrative services for the Committee on a reimbursable basis.

"(f) There are hereby authorized to be appropriated such sums as may be necessary, not to exceed $250,000, to carry out the provisions of this section."

Mr. DODD. Mr. President, will the Senator from New Hampshire yield?

Mr. McINTYRE. I am happy to yield to the Senator from Connecticut.

Mr. DODD. I am very grateful to the distinguished Senator for his splendid statement. He is right, we must take help from the private sector. The only way we can accomplish our task will be with the help of the private sector. It has already helped us tremendously.

The Senator has named some of the organizations which have been very much aware of this problem and have developed good programs for helping to deal with it.

With regard to the Senator's amendment, which he has just offered, I know that we will take that up, as he understands, the first part of next week. We will certainly look at it here. Whether we can go along with it, of course, I do not know at this moment.

I want to say to the Senator from New Hampshire, while he is on his feet, that he gave great encouragement to me personally, and to others on the subcommittee as we struggled with the bill, and I am grateful to him for having done so. The Senator from New Hampshire played a very important part in our efforts. Without his help we would not have been as far along with it as we are.

Mr. McINTYRE. I want to thank my distinguished friend from Connecticut and emphasize that I have been very much impressed by the desire of people, just the ordinary mother and dad, to try to get to know something about this subject. There is an awful lot of fiction connected with it, trying to come up with the true facts about it. I would hope that, somehow, all these great efforts can have the benefit of the coordination, direction, and harnessing, that such a committee as I have suggested in my amendment can accomplish.

I thank the Senator very much.

NEW DRUG LAWS SHOULD BE ENACTED WITHOUT DELAY

Mr. YOUNG of Ohio. Mr. President, the bill reported by the Judiciary Committee to reduce penalties for those convicted of using or possessing marihuana, heroin, and other narcotics should be approved without delay. The proposed legislation makes first-time possession of the drugs a misdemeanor rather than a felony. It makes a clear distinction between those who use drugs and those abominable bloodsuckers who traffic in them.

The fact is that excessively tough sentences for mere users have made rehabilitation difficult. In addition, in many cases they have led judges to suspend sentences entirely.

In fact, not long ago a man was caught bringing a very small quantity of marihuana across the Mexican border into the United States. He had no criminal record. However, he was arrested and the few ounces of marihuana confiscated. The trial judge sentenced him to 30 years imprisonment. Fortunately, the U.S. Supreme Court decided that this sentence was excessive. This is just one example of how present laws have failed to recognize and meet the problem.

Americans should know that marihuana, which our college youngsters term "pot" or "grass," is about as habit-forming as cigarettes. It is not addictive. In other words, its use does not lead one to become a drug addict. Knowledgeable physicians state its effects are similar to alcohol and cigarettes, but not heroin. Death can take many unpleasant forms. Surely, the worst is the lingering death of lung cancer which we now know is directly related to smoking cigarettes. Also, consider the ugly results of acute alcoholism concerning which too much social drinking is a prelude. Of course, alcoholism is a dread illness afflicting too many millions of our people. This is certainly not to reassure parents witnessing their youngsters of college age smoking marihuana. Perhaps the same drastic legislation should be proposed against cigarette smoking as against marihuana.

The fact is that for 50 years the approach of the law and law enforcement officers has been severe punishment for those convicted of the possession and use of marihuana. Marihuana, a nonaddictive drug, has been legally classified with the hard-core addictive narcotics such as heroin, cocaine, and the barbiturates. As such, the severe penalties for the possession of marihuana are vastly out of proportion with the seriousness of the crime.

Under the proposed bill, first offenses possession of marihuana, narcotics, LSD, amphetamines, barbiturates, and other dangerous drugs may be punished by a maximum fine of $5,000 and up to 1 year in prison. Of course the presiding judge will have the discretion as to whether sentence should be imposed or suspended. Under existing law first offense possession of marihuana and narcotics is subject to a $20,000 fine and a 2- to 10-year prison sentence. Where sentence is not suspended, it may be less than 2 years.

The bill also eases second offense penalties for possession by providing for a maximum fine of $10,000 and a maximum sentence of 2 years in prison, with suspension of sentence, probation, and parole possible in all such cases. Under existing law, the punishment for second offenses possession of marihuana and narcotics is up to $20,000 fine and 5 to 20 years imprisonment with no suspension of sentence or probation.

One would expect that such harsh penalties would act as a deterrent against possession of marihuana—that virtually everyone would be discouraged from its possession and use.

In fact, however, experience has proved the opposite result. The fact is that these stringent penalties have served as no deterrent whatsoever. The number of arrests on charges of sale or possession of marihuana has skyrocketed. For example, the number of arrests by State and local authorities in 1958 was 3,287. Ten years later, in 1968, there were 78,169 arrests, or an increase of nearly 2,500 percent in one decade. The arrest figures by Federal officers have increased at an equally high rate only in smaller numbers.

Mr. President, some estimates of the number of Americans who have experimented with marihuana run as high as 20 million people—almost 10 percent of the population of our country, according to officials of the National Institute of Mental Health. Even conservative estimates indicate 8 to 10 million citizens at one time or another have used marihuana.

In some elements of the population of course, these figures run much higher. Studies of some suburban and urban high school age youngsters revealed that as many as 50 to 75 percent have at least on one occasion tried "grass." Reports from Vietnam, a land where marihuana is plentiful, suggests 50 percent or more of American GI's and officers have smoked marihuana.

As Dr. Stanley F. Yolles, Director of the National Institute of Mental Health, put it:

> The smoking of marijuana has become an accepted fashion among millions of our citizens.

This is a fact that we in the Congress and State legislators in every State of the Union cannot continue to ignore.

We must not continue to pursue a policy which permits thousands of Americans, many of them young, to be persecuted under draconian laws that do not serve the purpose for which they were intended—laws that are now honored almost as much in the breach as in the observance. These outdated laws punish completely out of proportion to the magnitude of the crime. They, like the discarded prohibition statutes, encourage, and abet organized crime.

Mr. President, the laws regarding the possession and use of marihuana and other narcotics should be placed in the proper perspective. Those currently on the books offer no deterrent, are excessively harsh, and are almost totally unenforceable.

These laws must be changed immediately. I commend the distinguished junior Senator from Iowa (Mr. HUGHES) on the leadership he has taken in urging realistic reform of our laws regarding marihuana and addictive drugs. It is clear that more adequate scientific studies must be instituted to determine the effects of the use of marihuana on the individual and on society.

Mr. President, "our noble experiment" with alcoholic beverages was a dismal failure. Our approach to marihuana has been an equally dismal failure. It is time that Congress and the 50 State legislatures face up to that fact. To do otherwise is to encourage violation of the law and further disrespect for the law by millions of Americans—many of them who will be the leaders of tomorrow.

Mr. President, the proposed bill will not solve the drug problem. The bill itself has a serious drawback. Frankly, I am strongly opposed to that section of the bill containing the so-called "no-knock" provision which allows law officers with a warrant to enter a house without knocking if they believe drugs and other property being sought might be quickly destroyed. I firmly believe that this provision is unconstitutional—that it contravenes the fourth amendment to the Constitution which reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

It is unfortunate that in order to arrive at legislation establishing realistic and enforceable penalties for the possession and use of drugs, the Judiciary Committee, by a 6-to-5 vote, agreed to this patently unconstitutional infringement. I am hopeful that this provision of the bill will be eliminated when it is debated in the Senate. Then, with that obnoxious provision deleted, the bill should be passed without delay.

Mr. DODD. Mr. President, I want to acknowledge the support of my distinguished colleague from Ohio (Mr. YOUNG). As is customary, his remarks reflect the thought and consideration he has given to narcotics addiction, indeed the entire problem of drug abuse.

The distinguished Senator from Ohio's grasp of the issues involved here and the urgent need for immediate legislative action reflects his longtime concern over the problem.

I thank him for his support and for the time he has devoted to studying the bill and for his thoughtful analysis of the need for reform of drug penalty structures in the United States.

A CRISIS IN CREDIT

Mr. GORE. Mr. President, our people are hit with a credit crisis. It is hurting, too.

This credit crisis has been caused by a hands-off money policy by President Nixon.

This do-nothing policy about high interest rates, not even a mention in his state of the Union message, permits the big financial institutions to roll in the money while the average citizen and small business suffer.

Low interest rates have historically been a chief hallmark and one of the great strengths of our economic system. Without this, economic justice is difficult if not impossible; and without economic justice, social justice is a phrase. While other countries have labored under interest rates as high as 25 percent and 30 percent per year, we have, until recently, consistently been able to maintain interest rates at 4 to 6 percent per year for our people. Even during World War II the interest rates on Government bonds never exceeded 2½ percent, and the primary rate never rose above 1½ percent. This was a feat of Presidential leadership.

Former President Truman led the country through the Korean war maintaining a low interest rate structure. So it can be done; it has been done in both war and peace.

This policy of low interest rates has enabled our economy to expand at a rate which produced growth without distortion; has enabled our people to obtain decent housing at a reasonable cost on a scale unparalleled in the history of any country; and has provided the means by which consumers could acquire goods and services at a relatively low financing cost. Credit at low interest rates has been a dynamic force in our free enterprise economy, truly a hallmark of a democratic society.

But all this has changed, Mr. President. We have in the last year witnessed unparalleled acceleration in interest rates in the United States. They now threaten the very foundations of our monetary and economic policy.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for a question?

Mr. GORE. I yield.

Mr. BYRD of West Virginia. I shall not cause the Senator any inconvenience. This is in an effort to begin to tighten up the standing rule VIII which deals with the rule on germaneness.

I ask unanimous consent that the Senator be permitted to proceed for a certain length of time, notwithstanding rule VIII. Would the Senator indicate how much time he would need?

Mr. GORE. Mr. President, this is a pungent, but relatively brief speech, of which I would not want to deny the country the benefit. But I will deny my colleagues some of the benefit of hearing it, if I may have the promise of the able Senator from West Virginia that he will read it in the RECORD.

Mr. BYRD of West Virginia. Mr. President, the Senator from West Virginia intends to read the speech in the RECORD regardless of the length of time the Senator uses here today in expounding upon it.

I merely want to put the Senate on notice—not so much the Senator from Tennessee—that we will begin to tighten up rule VIII.

Mr. GORE. Mr. President, in view of the fact that the able Senator from Iowa (Mr. HUGHES) and the junior Senator from Tennessee will soon begin a journey to Tennessee where gathering throngs of Democrats are awaiting a speech by the distinguished Senator from Iowa, I shall speak rapidly and avoid taking very much more time of the Senate.

The Nixon administration, by the policy by which it has pursued and by its failure to exercise the moral and legal authority of the Presidency, has placed an intolerable burden on the working people and the small businessmen of this country, and has driven State and local governments to the brink of financial disaster.

On December 2, 1968, the major banks, then well advised as to the attitude of the President-elect and his choice for Secretary of the Treasury, raised the prime rate from 6¼ percent to 6½ percent.

Less than 3 weeks later, the big banks again raised the prime rate, this time to 7 percent.

On March 7, the prime rate was moved to 7½ percent.

Finally, on June 9, the major banks jumped the prime rate once again to 8½ percent. Many banks quickly followed, but, I am glad to say, some, particularly some small banks, did not.

Thus, within a period of just slightly over 6 months, the prime lending rate went from 6¼ percent to 8½ percent, an increase of almost 36 percent.

Now Mr. President, the administration cloaks this tight money-high interest rate policy in the loftiest of motives. We are going to curb inflation, they say. But Mr. President, at whose expense are they assertedly curbing inflation? Is it at the expense of the big banks? Oh no, for they are reporting the highest profits in history. Is it at the expense of the big corporations? Oh no, for the big corporations have already announced that capital expenditures will increase by over 10 percent again this year. Is it at the expense of the insurance companies? Oh no, they have record prosperity.

Moreover, raising interest rates has not curbed inflation. Quite to the contrary, inflation has galloped disastrously during the last year, partly as a result of inflation in interest rates.

Mr. President, the Nixon administration is following a deliberate high interest plan that will not control inflation

but which is at the expense of those who have been hit hardest by it. This high interest rate policy is at the expense of the mass of our people who must borrow money or buy on credit; the workers who are being deprived of jobs and who need the money most to raise and educate their children; the low- and middle- income families who cannot buy a house because the interest rates on the mortgages have now put decent housing beyond their reach; the State and local governments who cannot provide police and fire protection, water and sewage services, and control of pollution because they cannot finance the cost of these services at a reasonable rate; and the small businessman who cannot obtain credit necessary to survive as an independent businessman.

Mr. President, let us look at the record. President Nixon installed as the three top officials in the Treasury Department members of the major banking community. Toward the banking community, this banker's Treasury has adopted a strict laissez-faire policy and has totally abandoned responsibility to keep interest rates at a level that the average citizen in this country can afford to pay. When Secretary of the Treasury Kennedy appeared before the Senate Finance Committee on July 8 to urge extension of the 10 percent surcharge, I queried him as to what steps the administration was taking or proposed to take to control interest rates. Secretary Kennedy stated that he advocated an "open and free market policy." While Secretary Kennedy disclaimed authority to fix rates of interest, he did assert that the Treasury had been consulting with the Federal Reserve Board continuously with respect to its high interest rate-tight money policy, and that the policy of the Federal Reserve Board was consistent with the policy of the administration.

Now just what is that policy that the administration and the Federal Reserve Board have been consulting about and are in such close agreement on? Under Secretary of the Treasury Volcker appeared before the Senate Banking and Currency Committee to testify with respect to S. 2499 and S. 2577, measures designed to provide additional credit and to provide for regulation of interest rates. The Under Secretary testified that the administration opposed any measures which would impose limitations on interest rates, whether voluntary or mandatory. Then Chairman Martin of the Federal Reserve Board supported this same position, as did the present Chairman, Arthur Burns.

But these gentlemen testified strongly in support of the provision which would impose a limit on the maximum rate of interest which the banks would have to pay for the money which they were borrowing from the people who were depositing their money in savings accounts in the banks. This is what a "free and open market policy" means to this administration, Mr. President.

These high interest rate policies of the Nixon administration have benefited the big banks enormously, as the reports in the commercial journals have demonstrated in the past weeks:

The Security National Bank, of Huntington, N.Y., had an incredible increase in profits of 56 percent during the first year of the Nixon administration;

The First Chicago Corp., owner of the First National Bank of Chicago, reported an astronomical increase in profits of 44.5 percent;

Franklin National Bank, Mineola, N.Y., reported a 27.5-percent increase;

The National Bank of Detroit reported a 25-percent increase;

Cleveland Trust Co. reported a 22-percent increase in its profits in 1969 over 1968;

Crocker National Corp., a holding company for Crocker Citizens National Bank, reported a 21.7-percent increase in bank profits.

Profits of the National City Bank of Cleveland rose 18 percent;

BankAmerica Corp. reported a 14.8-percent gain in its 1969 net income over 1968;

Mellon National Bank reported a 13.2-percent increase;

First National City Bank of New York reported a 9.3-percent increase in profits in 1969.

Mr. President, I submit that these figures are a shocking indictment of the Nixon administration's high interest rate policies. These are policies for the benefit of the vested interests at the expense of the masses.

Insurance companies, too, could not be happier. They have grown vast and rich and now seek widely to fasten a high interest rate policy on the country. The terms of their loan contracts—high rates with no escape and part-of-the-action clauses—are unconscionable.

Compare the experience of other segments of the economy. On January 16, 1970, the New York Times reported that prices rose more in 1969 than in any year for 18 years. On January 19, 1970, the Wall Street Journal reported that the average profit margin for manufacturing firms was the lowest in 6 years. During 1969 we saw the unemployment rate climb, and we saw housing at a dangerously low level.

So here we have it, Mr. President. The high interest rate policy of the administration produces record profits for big banks and big insurance companies but does not inhibit the huge corporations at all and causes great hardship upon people who must borrow and buy on time.

Worse still, these high interest rates fuel inflation at the expense of jobs, housing, small business, and State and local governments.

We have seen in recent months the unemployment rate beginning to climb. The first people laid off, of course, are those who can least afford it—those who are most poorly educated who have the least skills and who have the hardest time providing food and clothing for their children. Oh, but the Federal Reserve Board, which has been "consulting" with the Nixon administration officials, is determined to pursue its high interest rate policy no matter what the consequences to the workingman. In an article by Richard F. Janssen in the January 14, 1970, edition of the Wall Street Journal, one of the members of the Federal Reserve Board is quoted as saying:

> I know it means sacrifices in jobs, but you would be surprised how much sacrifice I am willing to accept.

And let us take housing, Mr. President. Just a few weeks ago, FHA and VA interest rates were increased to 8.5 percent. This, it was said, was done to stimulate homebuilding. It was another nail in the coffin of homebuilding. With the cost of insurance added in, this means Americans must now pay 9 percent for mortgage money. Mr. President, for all practical purposes, this means that the low- and middle-income worker in this country simply cannot afford to buy a house. This is an increase from the 7¼-percent figure which prevailed in 1968. Thus, in the first year of the Nixon administration, we have had a 26-percent increase in the mortgage interest rates.

This is just profit in the hands of the financial institutions. It makes no money available. This increased cost is borne entirely by the home purchaser or borrower. On a $20,000 house with a 30-year mortgage, the borrower will now pay in interest, points, and other financial charges, over twice the value of the house. Most people cannot make such payments.

Secretary Romney attempted to justify the most recent increase on the ground that it would eliminate the need for financing institutions to charge points. This ludicrously naive argument would be humorous if it were not so tragic for the average American person who would like to buy his own home. Points will continue, Mr. President, and the profits of financial institutions will continue to accelerate under the high interest rate policy of this administration. This policy must be changed. A Government-guaranteed mortgage on an approved home should not be subject to discount. I tried to stop this discount practice when it first started.

The recent action of the Federal Reserve Board in raising rates that banks can pay on savings accounts from 4 to 4.5 percent, coming at the time it did, may well make matters worse instead of better. Standing alone the action is insignificant from the standpoint of making more money available for housing since such a small portion of bank loans are made for housing purposes. However, the Federal Reserve action forced a corresponding increase in rates paid on savings and loan deposits. This narrowed the already low profit margin that savings and loan associations make, because mortgage rates are lower than commercial loan interest rates. The net effect of this move, then, may be to produce still more pressure for higher mortgage rates, since savings and loan associations put 95 percent of their funds in home loans. Even though the depositor may be aided by this recent action, the working man who wants to buy a home will not be helped at all; he will, indeed, be worse off if mortgage rates go up again.

The Nixon administration is sacrificing small business to its high interest rate policy. The bankruptcy record attests to this. The big corporations, on the other hand, seem not to have serious trouble with high interest rates. In the first place, the Federal Government subsidizes almost one-half of the interest expense of

the big corporations through income tax deductions. The balance of the increased cost can be passed on to the consumer in the form of higher prices.

But even more significant, the big corporations are simply not affected as adversely as small business by high interest rates. The January 19 issue of Newsweek magazine, in an article on high interest rates, reports that one corporate giant, Babcock & Wilcox Co., has a $150 million line of bank credit at 8.5 percent, the prime rate. Yet that same article reports that a small businessman was confronted with banks demanding interest rates of 24 percent annually to finance needed working capital for expansion.

Mr. President, we have associated high interest rates with countries whose economies were on the verge of collapse. Yet, it is precisely these same kind of rates that are being engendered by the Nixon administration and its high finance cronies.

Another indicator of the fact that big business is not hurt by this policy is that capital expenditures are expected to increase by 10 percent in 1970 over 1969; and in 1969 these expenditures exceeded those in 1968 by 11 percent. Price increase follows price increase as higher costs, including high interest, are passed on to the consumer. Yet as the price of steel goes up, as the price of copper goes up, as interest charges skyrocket, the Nixon administration advisers solemnly advise that they are going to keep hands off and let the open market policy prevail.

The interest of State and local governments is sacrificed, too, by this high interest rate-tight money policy. The tax exempt bond market in the past year has been disastrous. The loser is the local resident who has either had to pay higher property taxes or to live with inadequate schools, roads, fire and police protection, and water and sewage systems because cities, counties, and States cannot afford to, or are not legally permitted to, pay the astronomical interest rates now being charged by the banks.

And why is this so? As this administration has let banks fix higher and higher interest rates on commercial and other loans, banks have substantially reduced their purchases of State and local bonds. During much of 1969, banks were net sellers of tax exempt bonds, rather than net buyers as they have been in past years. Thus, interest rates on State and local government bonds have risen higher and higher in a desperate but increasingly unsuccessful effort to attract investors. When banks have purchased State and local bonds, it has been at higher and higher interest rates. This cost is borne by local taxpayers who have seen their property tax rates go up and up to meet the bankers' demands. Indeed, we have now reached the point where many local governments are simply not providing badly needed services to their citizens because the legal rate of interest they can pay on their bonds is far below the rates demanded.

I visited Jamestown, Tenn., a few days ago. This city has a water supply crisis and had tried to sell an issue of municipal bonds. There was only one bidder at 9½ percent interest and even that bid was withdrawn.

Mr. President, that is the indictment against this administration. It stands charged with raising interest rates, or with following a deliberate hands-off, look-the-other-way policy that benefits the vested interests at the expense of jobs, housing, small business, those who borrow or buy on credit, and State and local governments.

And what, Mr. President, is the Nixon administration's answer to these charges. It answers that high interest rates are a symptom of inflation and that it is not going to interfere with the so-called free and open market either to bring them down or to prevent them from going higher. Oh, they talk of supply and demand, too, as if higher interest rates make more money available for loans when it is well known that higher rates only make the loans cost more.

Mr. President, this is a poor prescription for the economy, and many will not survive such medicinal malpractice. Every doctor knows that a fever is a symptom of an underlying illness. But the doctor does not let the fever run unchecked while he is treating the underlying illness. He prescribes medicine to reduce the fever at the same time he is dealing with the cause of the fever. For the doctor knows that the fever itself if unchecked for a long enough period of time, will produce its own complications and tragedies.

President Nixon has declined to use the moral and legal authority of the Presidency to halt this disastrous drive to higher and higher interest rates. And higher interest rates increase the cost of doing business, thus applying upward pressure on prices throughout the economy.

During Secretary Kennedy's testimony before the Finance Committee in July, he proudly disclosed that he had met with representatives of the 25 largest New York banks. When queried as to whether he had discussed measures to curb the interest rate spiral, he said the administration had no authority over interest rates. Mr. President, I suggest that this is a woefully inadequate view of the power and responsibility of the Presidency.

The Presidency carries with it the greatest moral authority of any public office in the world. When he accepted that authority, President Nixon also accepted the responsibility to exercise it in the best interests of the people of this country. The President has abdicated that responsibility. He has made no attempt to exercise his moral influence to halt the utterly immoral action by the big financial institutions of this country in filching ever higher and higher interest rates from our people and in depriving people of jobs and houses, of schools and public services.

Congress has now provided statutory authority for the President to stop inflation in interest rates. Last month Congress enacted a far-reaching bill that gave the President the power to reduce and regulate interest rates. While President Nixon may not wish to use the moral responsibility and authority inherent in the office of the President, as a lawyer he cannot fail to recognize the legal authority and responsibility conferred upon him.

This Congress bestowed upon President Nixon the broadest power ever given to any President in the United States to deal with interest rates. I call upon him to abandon his hands-off policy and to use this authority vested in him by the elected Representatives of the people.

In Public Law 91–151, the President was empowered to establish voluntary credit controls in consultation with representatives of the financial community. The president can now establish industrywide committees of bankers, investment bankers, life insurance companies, savings and loan associations, and mutual savings banks which can establish voluntary lending restrictions to hold down and reduce interest rates. The President can bring together the best advice from industry, business, financing, agriculture, labor and consumer interests to insure that these high interest rates which the country is now experiencing do not bring us to the brink of fiscal ruin.

The Congress also bestowed upon the President the power to establish mandatory credit controls. The Credit Control Act, passed last session, authorizes the President to empower the Federal Reserve Board to "regulate and control any or all extensions of credit" when he deems that such action is necessary or appropriate to prevent or control inflation. In the exercise of its regulatory power, the President and the Board can move in any one of a number of different ways as it may deem appropriate. It can prescribe maximum rates of interest, maximum maturity, minimum periodic payments, prescribe the maximum amount of credit that may be extended, require the licensing of credit transactions, prescribe maximum ratios to loans or deposits, or prohibit or limit any extensions of credit under any circumstances the Board deems appropriate.

This bill stands alongside the tax-reform bill as a monumental act for the people. Yet the President has not used any of this authority. The elected representatives of the people acted to lower interest rates and to stop the rise in the cost of living. It vested such power in the Chief Executive. Only the President can use that power, Congress being without power to take executive action. No other President has ever had such statutory power. Our crisis of credit makes imperative Presidential use of these unprecedented powers. Congress responded to this public need by enacting this bill. It is time for the President to use it.

There cannot be any excuse any longer for the President to fail to act to bring interest rates under control and to reduce them. The administration cannot assert any longer that it has no power to control interest rates. Action is needed now. I respectfully urge the President to assert his moral responsibility and to exercise his legal authority and responsibility.

Mr. President, I ask unanimous consent that title II of Public Law 91–151 be printed in the RECORD at this point.

There being no objection, the excerpt from Public Law 91–151 was ordered to be printed in the RECORD, as follows:

TITLE II—AUTHORITY FOR CREDIT CONTROL

Sec. 201. Short title

This title may be cited as the Credit Control Act.

Sec. 202. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section apply to the provisions of this title.

(b) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(c) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(d) The term "person" means a natural person or an organization.

(e) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) The term "creditor" refers to any person who extends, or arranges for the extension of, credit, whether in connection with a loan, a sale of property or services, or otherwise.

(g) The term "credit sale" refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any rental-purchase contract and any contract or arrangement for the bailing or leasing of property when used as a financing device.

(h) The terms "extension of credit" and "credit transaction" include loans, credit sales, the supplying of funds through the underwriting, distribution, or acquisition of securities, the making or assisting in the making of a direct placement, or otherwise participating in the offering, distribution, or acquisition of securities.

(i) The term "borrower" includes any person to whom credit is extended.

(j) The term "loan" includes any type of credit, including credit extended in connection with a credit sale.

(k) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(l) Any reference to any requirement imposed under this title of any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

Sec. 203. Regulations

The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

Sec. 204. Determination of interest charge

Except as otherwise provided by the Board, the amount of the interest charge in connection with any credit transaction shall be determined under the regulations of the Board as the sum of all charges payable directly or indirectly to the person by whom the credit is extended in consideration of the extension of credit.

Sec. 205. Authority for institution of credit controls

(a) Whenever the President determines that such action is necessary or appropriate for the purpose of preventing or controlling inflation generated by the extension of credit in an excessive volume, the President may authorize the Board to regulate and control any or all extensions of credit.

(b) The Board may, in administering this Act, utilize the services of the Federal Reserve banks and any other agencies, Federal or State, which are available and appropriate.

Sec. 206. Extent of control

The Board, upon being authorized by the President under section 205 and for such period of time as he may determine, may by regulation

(1) require transactions or persons or classes of either to be registered or licensed.

(2) prescribe appropriate limitations, terms, and conditions for any such registration or license.

(3) provide for suspension of any such registration or license for violation of any provision thereof or of any regulation, rule, or order prescribed under this Act.

(4) prescribe appropriate requirements as to the keeping of records and as to the form, contents, or substantive provisions of contracts, liens, or any relevant documents.

(5) prohibit solicitations by creditors which would encourage evasion or avoidance of the requirements of any regulation, license, or registration under this Act.

(6) prescribe the maximum amount of credit which may be extended on, or in connection with, any loan, purchase, or other extension of credit.

(7) prescribe the maximum rate of interest, maximum maturity, minimum periodic payment, maximum period between payments, and any other specification or limitation of the terms and conditions of any extension of credit.

(8) prescribe the methods of determining purchase prices or market values or other bases for computing permissible extensions of credit or required downpayment.

(9) prescribe special or different terms, conditions, or exemptions with respect to new or used goods, minimum original cash payments, temporary credits which are merely incidental to cash purchases, payment or deposits usable to liquidate credits, and other adjustments or special situations.

(10) prescribe maximum ratios, applicable to any class of either creditors or borrowers or both, of loans of one or more types or of all types

(A) to deposits of one or more types or all types.

(B) to assets of one or more types or of all types.

(11) prohibit or limit any extensions of credit under any circumstances the Board deems appropriate.

Sec. 207. Reports

Reports concerning the kinds, amounts, and characteristics of any extensions of credit subject to this title, or concerning circumstances related to such extensions of credit, shall be filed on such forms, under oath or otherwise, at such times and from time to time, and by such persons, as the Board may prescribe by regulation or order as necessary or appropriate for enabling the Board to perform its functions under this title. The Board may require any person to furnish, under oath or otherwise, complete information relative to any transaction within the scope of this title including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person.

Sec. 208. Injunctions

Whenever it appears to the Board that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this title, it may in its discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Board, any such court may also issue mandatory injunctions commanding any person to comply with any regulation of the Board under this title.

Sec. 209. Civil penalties

(a) For each willful violation of any regulation under this title, the Board may assess upon any person to which the regulation applies, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may, in the discretion of the Board, be brought in the name of the United States.

Sec. 210. Criminal penalty

Whoever willfully violates any regulation under this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is the amendment offered by the Senator from North Carolina to S. 3246.

Mr. BYRD of West Virginia. Mr. President. I thank the distinguished Presiding Officer.

May I inquire as to whether any Senator wishes to speak today?

Mr. DODD. I have no request.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum, to ascertain the answer to that question.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 11 A.M. MONDAY, JANUARY 26, 1970

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order that the Senate stand in adjournment until 11 o'clock Monday morning next.

The motion was agreed to; and (at 12 o'clock and 18 minutes p.m.) the Senate adjourned until Monday, January 26, 1970, at 11 a.m.

EXTENSIONS OF REMARKS

THE MAKING OF A UTILITY COMMISSIONER

HON. LEE METCALF
OF MONTANA
IN THE SENATE OF THE UNITED STATES

Saturday, January 24, 1970

Mr. METCALF. Mr. President, most electric, gas, and telephone rates and services—and in some cases insurance rates, as well—are regulated by State utility commissions. Hearings last year on S. 607, the utility consumers' counsel bill, elicited a wide range of comment regarding the efficacy of these commissions.

Generally speaking, although with exceptions, the commissioners and the regulated industries spoke well of the present system. Some commissions were characterized as well-meaning, quasi-judicial bodies, hampered mainly by the system—which S. 607 would correct—under which only the utilities' viewpoint is presented to them. Less charitable witnesses, from other States, declared that in reality the commissions with which they were familiar simply ratified the wishes of the utility before them, excluding the public and its representatives from deliberation and consideration.

Mr. President, from time to time, I have praised particular commissions or commissioners for substantial accomplishment, despite the handicaps of the system and the budget within which they operate. I have praised the California commission as one of the best, if indeed not the very best, of the State commissions.

It excluded executive featherbedding from the operating expenses of a telephone company.

Reversing a previous commission policy, it determined "henceforth to exclude from operating expenses for rate-fixing purposes all amounts claimed for dues, donations, and contributions," thereby requiring utilities to pay for the charity for which they take credit.

And it attempted—alas, unsuccessfully, in view of the State statute—to require the refund of utility overcharges.

None of these noteworthy actions of the California commission occurred during the past 3 years. The commission has changed. It changed because the Governor of California changed.

The Governor of California selects the members of the commission, a procedure with which I have no argument. He changed the policy that had been set by his predecessors—Governors Warren, Knight, and Brown.

The manner of the selection of a California commissioner has been chronicled in the Bay Guardian, a sprightly young newspaper which grew out of the San Francisco newspaper strike and which devotes itself to coverage of issues found unnewsworthy by the institutionalized San Francisco papers, an ambitious undertaking which the Guardian staff is nevertheless and nobly attempting to fulfill. I desire to share this account with Members of the Senate, and of the House, too, if they read this portion of the proceedings, as well as with members of the press, who on occasion turn to the RECORD in search of information which may be pertinent to legislative efforts and of interest to their readers.

I submit this article in sadness, because it indicates what has happened to the best of the State commissions. One wonders what has transpired in States where the commissions did not have so high a previous standard, and in which there is no Bay Guardian.

Mr. President, I ask unanimous consent to have printed in the RECORD the February 16, 1968, Bay Guardian article, "Utilities 'Man' on PUC," written by Ivan Sharpe.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

UTILITIES "MAN" ON PUC

(By Ivan Sharpe)

In a bombshell admission that may reverberate around the Reagan administration, a utility company executive frankly conceded to the Bay Guardian this week that utilities got their own man appointed to the State Public Utilities Commission.

Commissioner Fred P. Morrissey, one-time associate dean of the UC Graduate School of Business Administration at Berkeley, was recommended to Gov. Reagan after a hush-hush meeting of utility company attorneys in San Francisco's Bohemian Club in December 1966.

This meeting, which was hinted at and denied Jan. 25 in the final day of PUC hearings into PT&T's massive $181 million rate increase application, was confirmed to me by Sherman Chickering, general counsel and vice president of San Diego Gas & Electric Company.

"Utilities got together, as anybody has a right to do, to screen candidates for the commission," said Chickering, senior partner of the prestigious San Francisco law firm of Chickering & Gregory, 111 Sutter St.

"Most of the principal utilities had representatives at the Bohemian Club meeting," added Chickering. "We passed on our list of candidates to a screening committee headed by Joe Knowles, the Governor's representative here."

Chickering also confided that he was a member, along with five others, of that Reagan screening committee, although he claimed that he had never attended any of its meetings.

He said that the utilities had got together in the past to recommend candidates every time there was a pending vacancy on the PUC.

"FIRST TIME"

"This was the first time one of our candidates was chosen," he admitted, however.

Chickering described Morrissey's selection by the utilities was "natural one."

"I had read several of his articles about utilities and I knew what his views were. He was objective in his thinking. If somebody else hadn't put his name up, I might have done so myself," he said.

Chickering also said he was disappointed there were not more utility company representatives on the Knowles committee.

"There were people like Knowles who knew very little about utilities," he added.

Knowles, a taciturn stockbroker little known outside his office on the second floor of the State Building here, at first denied there were any utility men on his screening committee, which he called a talent search subcommittee.

After I pointed out Chickering's utility connections, Knowles said: "I didn't know that. I just know him as an attorney and a very good one."

Asked the names of his committee members, he replied: "I can't even recall who was on the committee now. It was over a year ago."

He said there were six on the committee including himself.

"I CAN'T REMEMBER"

Knowles, again, at first emphatically denied that he had got names of possible candidates from the utilities. But, when told of Chickering's admission, he conceded: "I can't remember now."

He added: "All I did was to try to get names of people who were interested in being appointed to the commission. I had a whole sheaf of names with resumes and biographies."

Despite the biographies, Knowles claimed that he did not know that Commissioner Morrissey was a former paid consultant for Pacific Telephone.

Chickering's startling disclosure drew a predictably sharp comment from PUC Commissioner William M. Bennett, whose persistently probing questions during the final day of telephone rate hearings into the circumstances of Morrissey and Commissioner William Symons' appointments led to angry exchanges.

"As a Californian and one who must take utilities' services, such as gas, electricity, telephones, I don't like a system that permits California public utilities to pick commissioners," he said.

"I think it is a terrible thing when the Reagan administration is consulting with California public utilities to select commissioners who are supposed to protect the public interest and oppose those utilities in their rate applications."

"THE SAFEST CANDIDATE"

"Realistically, those utilities aren't going to recommend anyone but the safest candidate for them," declared Bennett, a Democratic holdover who does not expect to be reappointed when his term ends this December.

The circumstances of Morrissey's appointment to the $25,000, six-year-term PUC job assume more damaging and tainted significance when it is remembered that Reagan early last year made the unprecedented comment during the telephone company rate hearing:

"The phone company here in California has been in great difficulty because of some of the actions on the Public Utilities Commission. The PUC is going to have to be more realistic in its approach and its permissions to the phone company."

Lt. Gov. Robert H. Finch also said that the view was outdated that only the public's interest must be protected in regulation of utilities.

Philip M. Battaglia, Reagan's former executive secretary, predicted last year that utilities would get fairer treatment from the PUC in the future.

This week Battaglia told me: "We had certainly heard a lot of complaints during the campaign that the PUC needed a balance. If the thinking was oriented one way, it should be balanced out with some fresh thinking."

However, Battaglia said he would be "very surprised" if the utilities had, in fact, recommended Morrissey.

In any case, Commissioner Morrissey him-

self feels there is nothing to be perturbed about.

If the utilities had put his name forward to Governor Reagan, he said this week, "I don't know whether it would be improper or not. Whether they did or didn't is substantially indifferent to me. I would vote independently in any case."

He said he found Chickering's admission "frankly hard to believe.

"What has happened here is that there has been a concerted effort on someone's part to label me as pro-utility. I just don't think this is so.

"Look through the way I've voted in the past year. I'm sure I've voted on matters which would displease utilities."

TWO ARTICLES

Morrissey said two articles he wrote in the Public Utilities Fortnightly in April and November, 1966, were "more pieces of research rather than pro-utility."

"I still look upon myself as an academician," he added. His paid work for the telephone company was in the 1950s, he said.

Tom Reed, Reagan's former appointments secretary who quit at the end of Reagan's first 100 days in office, denied that utilities had any say in Morrissey's appointment.

"They made no recommendations to me," he said.

Reed, who runs a mining and land company in Nevada County and lives in San Raphael, said he had given Reagan five or six names for the PUC appointments, with Morrissey and Symons getting his personal recommendation.

He recommended Morrissey, he said, after his name had been put forward by the major appointments task force, by a senator and after canvassing college faculties.

SCREAM VIOLENT OBJECTIONS

He conceded that utility companies didn't "scream violent objections" to Morrissey's nomination.

"I thought then, and I still do, that both Morrissey and Symons were intelligent, impartial and fair guys who were concerned with the best interests of the people," said Reed.

Symons, a rancher, whose Mono County GOP senate seat was swept away by reapportionment in 1966 after serving one year in the Legislature, was recommended by members of the State Senate, disclosed Reed.

"COMPLETE SURPRISE"

Chickering, incidentally, said Symons' appointment came as a "complete surprise" to him and to the utilities, who had not recommended him.

Whatever the political repercussions of Chickering's remarkably frank statements, great doubt is now thrown on the validity and fairness of the Pacific Telephone hearings which ended last month after 82 days and 12,568 pages of testimony.

Pacific, in requesting a $181 million rate boost, wants to improve its allegedly depressed rate of return on investment by some 30%—to 80% from 6.3%. If granted in full, the request would nearly double some phone bills in San Francisco.

Chickering's remarks also appeared to contradict sworn testimony by Jerome W. Hull, Pacific's executive vice president, who stated: "I do not know of any recommendations that were made to the Governor by any utility group."

HOUSE OF REPRESENTATIVES—*Monday, January 26, 1970*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

To this end we toil and strive, because we have our hope set on the living God.—I Timothy 4: 10.

O Thou eternal Father of our spirits, in this quiet moment at the beginning of another week we lift our hearts unto Thee who art the source of all our being and the goal of our noblest endeavors. We pray for strength to carry our burdens, wisdom to see through the problems we face, insight to discover what is right, and courage to walk in right ways.

With all our hearts we pray for our country, for Members of Congress, all who work with them, and for our people scattered far and wide on this land of the free. By Thy spirit may we learn to live together with respect for others in our minds, with good will for others in our hearts, and crown our good with brotherhood from sea to shining sea. Amen.

THE JOURNAL

The Journal of the proceedings of Thursday, January 22, 1970, was read and approved.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Leonard, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested.

S. 30. An act relating to the control of organized crime in the United States.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., January 23, 1970.

The Honorable the SPEAKER,
U.S. House of Representatives.

DEAR SIR: I have the honor to transmit herewith a sealed envelope addressed to the Speaker of the House of Representatives from the President of the United States, received in the Clerk's Office at 1:15 p.m., on Friday, January 23, 1970, and said to contain a message from the President wherein he transmits a study of instructional television and radio pursuant to Section 301 of the Public Broadcasting Act of 1967.

With kind regards, I am,
Sincerely yours,
PAT JENNINGS, *Clerk.*

COMPREHENSIVE STUDY OF INSTRUCTIONAL TELEVISION AND RADIO—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Interstate and Foreign Commerce:

To the Congress of the United States:

Section 301 of the Public Broadcasting Act of 1967 authorized the Secretary of Health, Education, and Welfare to conduct a comprehensive study of instructional television and radio. Former Secretary Wilbur Cohen appointed a Commission to conduct such a study. The report of that Commission is transmitted herewith.

This Administration will transmit its views on instructional television and radio and related matters at a later date.

RICHARD NIXON.

THE WHITE HOUSE, *January 23, 1970.*

ATOMIC ENERGY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Joint Committee on Atomic Energy:

To the Congress of the United States:

Pursuant to the Atomic Energy Act of 1954 as amended, I am submitting to the Congress an authoritative copy of an amendment to the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation on the Uses of Atomic Energy for Mutual Defense Purposes of July 3, 1958, as amended. The Amendment was signed at Washington on October 16, 1969.

The Agreement as amended included a provision (Paragraph A of Article III *bis*) under which the Government of the United States agreed to transfer to the Government of the United Kingdom for its atomic weapons program prior to December 31, 1969 in such quantities and on such terms and conditions as may be agreed non-nuclear parts of atomic weapons and atomic weapons systems as well as source, byproduct and special nuclear material. A second provision of the Agreement (Paragraph C of Article III *bis*) stipulated that the Government of the United Kingdom would transfer to the Government of the United States for military purposes such source, byproduct and special nuclear material, and equipment of such types, in such quantities, at such times prior to December 31, 1969 and on such terms and conditions as may be agreed.

Under the Amendment submitted herewith the period during which the provisions of Paragraphs A and C of Article III *bis* of the Agreement for Cooperation remain in force would be ex-